

DOCKET NO. 2019-185-E
DOCKET NO. 2019-186-E

South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Duke Energy Carolinas, LLC's and Duke Energy Progress LLC's Standard Offer Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) – S.C. Code Ann. Section 58-41-20(A)

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I. INTRODUCTION AND PURPOSE

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Steven B. Wheeler and my business address is 411 Fayetteville Street, Raleigh, North Carolina 27601.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am the Pricing and Regulatory Solutions Director for Duke Energy Business Services, LLC ("DEBS"). DEBS is a service company subsidiary of Duke Energy Corporation ("Duke Energy") that provides services to Duke Energy and its subsidiaries, including Duke Energy Progress, LLC ("DEP") and Duke Energy Carolinas, LLC ("DEC" or, collectively, the "Companies" or "Duke").

Q. DID YOU PREVIOUSLY FILE DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, I did.

Q. ARE YOU INCLUDING ANY EXHIBITS IN SUPPORT OF YOUR REBUTTAL TESTIMONY?

A. Yes. I have prepared five rebuttal exhibits described as follows:

1. **Wheeler DEC Rebuttal Exhibit 1** presents a revised clean version of DEC's proposed Terms and Conditions for the Purchase of Electric Power ("Terms and Conditions").

2. **Wheeler DEC Rebuttal Exhibit 2** presents DEC's current Commission-approved Terms and Conditions redlined to reflect all changes being requested in this proceeding (with new changes proposed in my rebuttal testimony shown in blue).

1 3. **Wheeler DEP Rebuttal Exhibit 3** presents a revised clean version of DEP's
2 proposed Terms and Conditions.

3 4. **Wheeler DEP Rebuttal Exhibit 4** presents DEP's current Commission-
4 approved Terms and Conditions redlined to reflect all changes being requested
5 in this proceeding (with changes proposed in my Rebuttal Testimony shown in
6 blue).

7 5. **Wheeler Rebuttal Exhibit 5** presents a revised Exhibit A to the DEC and DEP
8 Standard Offer PPA to describe the Energy Storage Protocol for Schedule PP
9 Sellers.

10 **Q. WERE THESE EXHIBITS PREPARED BY YOU OR AT YOUR**
11 **DIRECTION AND UNDER YOUR SUPERVISION?**

12 A. Yes, these exhibits were prepared by me or at my direction and under my
13 supervision.

14 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**
15 **PROCEEDING?**

16 A. My Rebuttal Testimony addresses certain comments from intervenors related to the
17 standard offer Schedule PP tariff, standard offer Power Purchase Agreement
18 ("Standard Offer PPA"), standard offer Terms and Conditions, and the
19 administration of the Integration Services Charge, as described below:

20 1. I incorporate the comments from the Direct Testimony of Office of Regulatory
21 Staff ("ORS") Witness Horii, and amend the Terms and Conditions to clarify
22 certain provisions related to the "Material Alteration," estimated annual energy

1 production, and the cure period offered under certain circumstances of
2 noncompliance.

3 2. I address the Direct Testimony of South Carolina Solar Business Association
4 (“SBA”) Witness Steve Levitas, with regard to (1) the information to be provided
5 by QFs about their Facility and the ability of QFs to unilaterally make material
6 changes to that information under the Standard Offer PPA; (2) the requirement for
7 QFs to begin delivering power within 30 months after the order issued in this
8 proceeding; and (3) the recommendation to impose liquidated damages on QFs
9 selling output to the Companies under the Standard Offer PPA. My testimony
10 explains why it is important for the Companies, as Buyers of QF power, to be
11 provided certain critical information about the QF Facility selling its output to the
12 Companies, and how it would detrimentally impact the Companies and the
13 Companies’ customers if QFs were allowed to unilaterally make changes to that
14 information. My testimony also explains how the 30-month period criticized by
15 SBA Witness Levitas is important to ensuring that avoided cost rates paid by
16 customers are an accurate reflection of the Companies’ avoided cost rates at the
17 time the QF Facility begins selling its output. I also discuss my concerns with
18 imposing liquidated damages on standard offer QF Sellers, and offer an alternative
19 solution to address Witness Levitas’ concerns. I also generally adopt all of SBA
20 Witness Levitas’ recommendations related to the Energy Storage Protocols.

21 3. My testimony also responds to the Direct Testimonies of ORS Witness Horii and
22 SBA Witness Levitas related to the Solar Integration Services Charge rate design.

23 I explain that the utilization of an average cost rather than incremental cost is

1 appropriate to ensure that all cost causers pay an equal share of the average cost.
2 Adopting the average cost will also dampen the volatility of the SISC being
3 assigned to any individual solar generator over time.

4 **II. STANDARD OFFER PURCHASE POWER AGREEMENT AND TERMS AND**
5 **CONDITIONS**

6 **Q. PLEASE BRIEFLY DESCRIBE DUKE'S PROPOSED STANDARD OFFER**
7 **PPA, AS SUPPORTED IN YOUR DIRECT TESTIMONY.**

8 A. The Standard Offer PPA is the pro forma PPA that the Companies use to contract
9 with QFs eligible for the Standard Offer for the purchase of energy and capacity
10 under PURPA. The Standard Offer PPA describes the QF Facility's site location,
11 expected generation capacity, annual energy production, expected date of
12 operation, point of interconnection, delivery voltage, and the business name and
13 address of the QF owner. The Standard Offer PPA is thus essential to establishing
14 the physical parameters that support interconnecting the QF to the Companies' grid
15 and to memorializing the commercial terms of purchasing the QF's power.
16 Additionally, the Standard Offer PPA specifies the desired contract term and rate
17 option selected by the QF from Schedule PP.

18 **Q. PLEASE DESCRIBE THE PURPOSE OF THE COMPANIES' STANDARD**
19 **OFFER TERMS AND CONDITIONS, AS SUPPORTED IN YOUR DIRECT**
20 **TESTIMONY.**

21 A. The Terms and Conditions are incorporated into the Standard Offer PPA by
22 reference (*see* Section 2 of the PPA) and set forth the contractual obligations of
23 both the QF and the Companies as necessary to administer Schedule PP and the

1 Standard Offer PPA in a consistent manner. The Terms and Conditions serve a
2 similar function as the Companies' Service Regulations for retail customers. In
3 particular, the Terms and Conditions address the QF's commitment to deliver the
4 capacity, quantity, and quality of electricity under the Standard Offer PPA and then
5 set forth the impacts and remedies of failing to meet these obligations. The Terms
6 and Conditions also address billing issues, such as meter readings schedules and
7 how payments are handled if a meter error occurs, and describe the payment for
8 interconnection facilities if not addressed in the Interconnection Agreement
9 executed with the QF.

10 **Q. DO ORS WITNESSES LAWYER AND HORII SUPPORT THE**
11 **COMPANIES' PROPOSED TERMS AND CONDITIONS?**

12 A. Yes. ORS Witness Lawyer found that the proposed Terms and Conditions were
13 reasonable and would not degrade the provision of reliable service or shift costs to
14 retail customers.¹ ORS Witness Horii stated that the Terms and Conditions were
15 commercially reasonable, but expressed concerns with how the "estimated annual
16 energy production" would be calculated.²

17 **Q. PLEASE DESCRIBE ORS WITNESS HORII'S CONCERN REGARDING**
18 **THE DEFINITION OF ESTIMATED ANNUAL ENERGY PRODUCTION.**

19 A. The proposed definition of Material Alteration includes changes to the QF Facility
20 that would modify the QF's estimated annual energy production, by greater than
21 5%. Witness Horii questioned whether it would be appropriate under PURPA to

¹ ORS Lawyer Direct, at 6.

² ORS Horii Direct, at 26-27.

1 include changes to the estimated annual energy production as a Material Alteration,
2 such that those changes would subject the PPA to termination.

3 **Q. HOW DO THE COMPANIES PROPOSE TO RESOLVE ORS WITNESS**
4 **HORII'S CONCERN?**

5 A. The Companies recommend that the definition of Material Alteration be revised to
6 delete the reference to estimated annual energy production. The new definition will
7 now read as follows:

8 (f) "Material Alteration" as used in this Agreement shall mean a
9 modification to the Facility which renders the Facility description specified
10 in this Agreement inaccurate in any material sense as determined by
11 Company in a commercially reasonable manner including, without
12 limitation, (i) the addition of a Storage Resource; (ii) a modification which
13 results in an increase to the Contract Capacity, Nameplate Capacity (in AC
14 or DC), or generating capacity (or similar term used in the Agreement) (the
15 "Existing Capacity"), or (iii) a modification which results in a decrease to
16 the Existing Capacity by more than five (5) percent. Notwithstanding the
17 foregoing, the repair or replacement of equipment at the Facility (including
18 solar panels) with like-kind equipment, which does not increase Existing
19 Capacity or decrease the Existing Capacity by more than five percent (5%),
20 shall not be considered a Material Alteration.

21 Consistent with this change, the Companies have also removed the
22 reference to annual energy production in Paragraph 1(i), such that termination or
23 suspension of the PPA is now only allowed as a result of a Material Alteration or if
24 the contract capacity is otherwise exceeded. A corresponding change is also
25 reflected in Paragraph 4(b) with respect to compensation for changing the estimated
26 annual energy production without first providing notice and receiving written
27 consent.

1 **Q. PLEASE RESPOND TO WITNESS HORII'S QUESTION AT PAGE 30 AS**
2 **TO WHETHER THE TERMS AND CONDITIONS PROVIDE QFS WITH**
3 **A PERIOD OF TIME IN WHICH THEY MAY CURE ANY**
4 **NONCOMPLIANCE UNDER SECTION 1(i) PRIOR TO RECEIVING**
5 **NOTICE OF TERMINATION OR SUSPENSION FROM THE BUYER.**

6 A. Paragraph 1(i) includes a statement that "Termination of the Agreement shall be at
7 Company's sole option and is only appropriate when Seller either cannot or will
8 not cure its default." While the Companies believe that the current provision offers
9 QFs the opportunity to cure or otherwise resolve any issues that cause
10 noncompliance with the terms of the PPA, the Companies propose that Paragraph
11 1(i) be revised to specifically address Witness Horii's concern. The revised
12 provision now offers a 30-day cure period after receipt of the Company's notice in
13 all cases except when the Seller has failed to operate for six consecutive months, in
14 which case a 5-day cure period will apply.

15 **Q. DO YOU AGREE WITH SBA WITNESS LEVITAS' PROPOSED**
16 **CHANGES TO THE ENERGY STORAGE PROCOLS?**

17 A. Yes, in part. SBA Witness Levitas recommends that the Companies apply the
18 Energy Storage Protocols used with the proposed standard form of PPA available
19 to QFs greater than 2 MW in size and not eligible for the Standard Offer ("Large
20 QF PPA") to the Standard Offer PPA, with an amendment to Section 6. The
21 Companies do not oppose the amendment proposed to Section 6 and do not oppose
22 the use of the amended Large QF PPA Energy Storage Protocol for both Standard

1 Offer and Large QF PPAs, as further explained in the Rebuttal Testimony of Duke
2 Witness David Johnson.

3 However, I disagree with SBA Witness Levitas' recommendations that
4 Paragraph 5 of the Standard Offer PPA should be revised to state that the Energy
5 Storage Protocol is subject to Commission approval. There is no question the
6 Companies are requesting approval of the Energy Storage Protocol in this
7 proceeding. It would be redundant to call out this one portion of the PPA as
8 "subject to Commission approval" where the entire PPA is subject to Commission
9 approval (and no other provisions contains such conditional language). This same
10 change is proposed in the Standard Offer Terms and Conditions in Section 2(b). In
11 an effort to compromise with Witness Levitas, I have revised Section 2(b) of the
12 Terms and Conditions to reference Commission approval of the Energy Storage
13 Protocols. While I am not filing a revised Standard Offer PPA with my testimony,
14 the Companies do not object to including this same edit in the Standard Offer PPA

15 **Q. PLEASE DESCRIBE WHEELER REBUTTAL EXHIBIT 5.**

16 A. Wheeler Rebuttal Exhibit 5 presents a revised Exhibit A to the DEC and DEP
17 Standard Offer PPA to describe the Energy Storage Protocol for Schedule PP
18 Sellers. As recommended by SBA Witness Levitas, it matches the protocol
19 proposed for a Large QF PPA with minor changes to recognize that it applies to
20 Standard Offer QFs.

1 **Q. IS SBA WITNESS LEVITAS' PROPOSAL TO REMOVE THE PROVISION**
2 **IN SECTION 3 OF THE PPA RELATED TO THE REQUIREMENT TO**
3 **DELIVER POWER BY A DATE CERTAIN REASONABLE?**

4 A. No. By way of background, I would like to explain that this provision was added
5 to both the Standard Offer PPA and Standard Offer Schedule PP in 2016 to require
6 QFs to complete construction and begin delivery of generation in a timely manner.
7 Without this requirement, a QF can enter into a Standard Offer PPA and wait an
8 indefinite period of time before beginning to sell power to the Companies.
9 Hypothetically, this would allow a QF to enter into a Standard Offer PPA in 2019
10 and begin selling its output to the Companies in 2025, for a period ending in 2035,
11 at rates set in 2019. This result would be unjust and unreasonable to customers and
12 in blatant contradiction to PURPA, FERC's implementing regulations, and Act 62,
13 which require the utility's avoided cost to be an accurate reflection of the utility's
14 actual incremental costs of alternative energy. Removing this provision could also
15 potentially preclude other QFs that are actually committed to delivering power to
16 the Companies from being developed in the event the "committed QF" has a later-
17 established interconnection queue number and needs to utilize the same distribution
18 assets, which are subscribed by a non-operational QF.

19 I would further point out that the Standard Offer Tariff provides that a Seller
20 must begin delivering power within 30 months from the date of the order approving
21 the Tariff (and which may be extended under limited circumstances set forth in the
22 Tariff). Thirty months is more than a reasonable period of time for the standard
23 offer rates to remain available to QFs after Commission approval, and such rates

1 will be updated in the Companies' next avoided cost proceeding for QFs that are
2 not far enough along in the development process to be operational within that time
3 period. Retaining this provision in the Standard Offer PPA and Standard Offer
4 Tariff is imperative to ensuring QFs cannot sell power under stale and inaccurate
5 avoided cost rates, which customers must pay for.

6 **Q. DO YOU AGREE WITH SBA WITNESS LEVITAS' PROPOSAL SHOWN**
7 **ON PAGE 2 OF HIS EXHIBIT 1 TO REMOVE FROM THE STANDARD**
8 **OFFER PPA THE REQUIREMENT FOR SELLERS TO STATE THE DC**
9 **RATING OF THEIR FACILITY AND TO IDENTIFY ANY STORAGE**
10 **RESOURCES ASSOCIATED WITH THE FACILITY?**

11 A. No, I do not. I believe it is reasonable to require the QF Seller to provide the Buyer
12 with such standard information about the Facility from which the Buyer is
13 purchasing power. One of the primary functions of the PPA is to provide details
14 on the Seller's Facility to aid the Companies in integrating the Facility's generation
15 output into the generation, transmission and distribution systems. To accomplish
16 this, the Companies must understand the type of equipment being installed and be
17 provided meaningful information regarding how it will be operated. The
18 Companies must understand when generation deliveries should be expected, in
19 order to ensure the Companies have adequate available facilities from other sources
20 during times when the QF generation is not available. The provision of both the
21 DC and AC equipment ratings, descriptions of installed equipment, such as energy
22 storage devices, that could alter the natural times of delivery and the estimated

1 annual energy production all aid in the Companies' planning and therefore should
2 be identified in the PPA.

3 Furthermore, while these changes are illustrated in Mr. Levitas' Exhibit 1,
4 Mr. Levitas provides no basis for eliminating these requirements in his testimony.
5 Mr. Levitas also proposes a nearly identical change in the Standard Offer Terms
6 and Conditions in Section 3(g), which should similarly be rejected.

7 **Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF SBA WITNESS**
8 **LEVITAS' PROPOSAL TO REPLACE THE TERM "ESTIMATED**
9 **ANNUAL ENERGY PRODUCTION" WITH THE TERM "MAXIMUM**
10 **ANNUAL ENERGY PRODUCTION" AND TO ELIMINATE THE**
11 **CONCEPT OF "MATERIAL ALTERATION" IN THE STANDARD OFFER**
12 **PPA AND TERMS AND CONDITIONS.**

13 A. Mr. Levitas unreasonably proposes to replace the term "estimated annual energy
14 production" with "maximum annual energy production," which in turn would
15 replace the concept of "Material Alteration" used in the Terms and Conditions.
16 While Mr. Levitas' testimony does not explain all of the changes contained in his
17 Exhibits 1 and 2, the Companies believe Mr. Levitas intends the revisions to 1(i),
18 3(f), 3(g) 4(b), 4(e), 5, and 8(e) to the Terms and Conditions, along with the
19 revisions to the introductory section describing the planned facilities and Section
20 1.4 of the Standard Offer PPA to effectuate this change.

21 Let me explain: the Companies' Terms and Conditions include a provision
22 for Material Alteration, which provides the Buyer with grounds to terminate the
23 PPA if certain changes are made to the QF Seller's Facility that render the Facility

1 description inaccurate in any material sense. Mr. Levitas argues that calculating a
2 “maximum annual energy production” for each QF Seller’s Facility using a formula
3 that greatly exceeds the expected theoretical output of the Facility and restricting
4 the QF Seller from exceeding that value would serve as an adequate substitute for
5 the Material Alteration provision set forth in the Companies’ Terms and
6 Conditions.

7 **Q. WHAT IS THE COMPANIES’ JUSTIFICATION FOR INCLUDING THE**
8 **MATERIAL ALTERATION CONCEPT IN THE TERMS AND**
9 **CONDITIONS?**

10 A. First, as a simple contracting principle, the Companies are entering into an
11 agreement to purchase the power of a specifically identified QF Facility at a specific
12 avoided cost rate over a specified future term. Should that Facility change in any
13 material way from the Facility with which the Buyer originally contracted, it
14 follows that the Buyer should have the option to terminate the contract and enter
15 into a new contract with the Facility’s generation characteristics accurately
16 reflected. The Material Alteration definition was added to more clearly identify
17 conditions that warrant a review of rates offered under the PPA be revisited to
18 properly align with the value received by ratepayers, as explained below.

19 Additionally, the Material Modification concept mitigates the Companies’
20 concerns over QF Facilities that seek to increase their energy output and expect to
21 be paid for that additional output at older, higher avoided cost rates, to the detriment
22 of the Companies’ customers. This is true for modification to QF Facilities that
23 increase their generator size (MW_{AC}) or their capability to produce energy in more

1 hours of the day (MW_{DC}). The concern for the Companies' customers is especially
2 valid given that the avoided cost rates last approved by the Commission are higher³
3 than the avoided cost rates proposed in this case. Further, the Companies' actual
4 hours and periods of highest marginal cost of generation no longer align with the
5 on-peak periods for QFs delivering power under previous Standard Offer PPAs.
6 This means that more "on-peak" generation delivered under these earlier Schedule
7 PP vintages will often not be avoiding DEC's and DEP's actual highest production
8 cost hours. Developers should be incented to make capital investments based on
9 the most up-to-date and accurate price signals concerning the value of energy and
10 capacity and it is inequitable and unreasonable to allow compensation for capital
11 investments made today at old, stale rates.

12 In addition, modifications to existing QF Facilities in this regard can result
13 in inaccurate payments to QFs under the levelized avoided cost rate structure. In
14 order to pay QFs at a fixed rate for the duration of the 10-year contract, in
15 compliance with Act 62, the avoided cost rate paid each year of the 10-year period
16 is levelized. As seen in Figure 1 below, the actual avoided cost rate varies each
17 year of the 10 year contract. The Variable Rate Payment shows the purchased
18 power payment that would be made at the realized fuel benefit each year assuming
19 an annual generation of 10,000 kWh. The Levelized Payments show the payment
20 for an equivalent amount of generation actually received by the QF each year based
21 on the levelized avoided cost rate. Under a levelized rate, the QF is overpaid the

³ For DEC, the 10-year Levelized rate for distribution connected QFs decreased by 38% while the equivalent rate for DEP decreased by 33% when compared to the last approved rates.

true value of its output during the early years of the contract and is underpaid the true value of its output in later years such that, over the contract term, retail customers are indifferent.

FIGURE 1:

QF Levelized Rates				
<i>*NPV is identical, retail customers are indifferent</i>				
<i>Assumes Variable Rate escalates by 2% per year</i>				
<u>Year</u>	<u>Variable Rate (¢/kWh)</u>	<u>kWh Delivered</u>	<u>Variable Rate Payments</u>	<u>Levelized Payments</u>
2019	3.000	10,000	\$300	\$325
2020	3.060	10,000	\$306	\$325
2021	3.121	10,000	\$312	\$325
2022	3.183	10,000	\$318	\$325
2023	3.247	10,000	\$325	\$325
2024	3.312	10,000	\$331	\$325
2025	3.378	10,000	\$338	\$325
2026	3.446	10,000	\$345	\$325
2027	3.515	10,000	\$352	\$325
2028	3.585	10,000	\$359	\$325
		Net Present Value	\$2,309	\$2,309

Importantly, under this ratemaking principle, retail customers are only held harmless if an equivalent amount of electric power is delivered each year of the contract term. As shown in Figure 2 below, if a QF produces less power in the later years, the levelized payments exceed the actual value of the QF output, as shown under the Variable Rate Payment total. As a result, retail customers overcompensate the QF over the contract term. While this example only results in a \$28 overpayment, it is illustrative of the risk to retail customers of a QF not fulfilling or changing their obligation, including the time of delivery with storage, over the levelized payment period to take undue advantages of changes in avoided cost over time.

FIGURE 2:

Generation Reduces In Later Years				
<i>*Variable Rate NPV is lower, retail customers overpay at levelized rate</i>				
<u>Year</u>	<u>Variable Rate (¢/kWh)</u>	<u>kWh Delivered</u>	<u>Variable Rate Payments</u>	<u>Levelized Payments</u>
2019	3.000	10,000	\$300	\$325
2020	3.060	10,000	\$306	\$325
2021	3.121	10,000	\$312	\$325
2022	3.183	10,000	\$318	\$325
2023	3.247	10,000	\$325	\$325
2024	3.312	5,000	\$166	\$163
2025	3.378	5,000	\$169	\$163
2026	3.446	5,000	\$172	\$163
2027	3.515	5,000	\$176	\$163
2028	3.585	5,000	\$179	\$163
		Net Present Value	\$1,797	\$1,825

This example illustrates even for a very small 4 kW rooftop solar system why it is important for a QF to clearly establish its expected generation output and generation profile in the PPA—not state some arbitrary maximum theoretical output—and then honor its contractual commitment for the contract term. If the QF decides to modify or upgrade its facilities, it is important to first notify the Companies, gain consent, and then modify the PPA to reflect the appropriate rates that provide an accurate value for the power being provided. To change operating conditions without notice potentially harms retail customers and over-compensates the QF for the value realized by retail customers. Obviously, the risk imposed on retail customers by changes in delivered electricity over a contract term are much greater than the \$28 when the Commission considers the volume of significantly larger utility-scale solar plants currently under development.

1 **Q. IF DUKE TERMINATED A CONTRACT WITH A QF SELLER**
2 **PURSUANT TO SECTION 1(i) OF THE TERMS AND CONDITIONS**
3 **BASED ON A MATERIAL ALTERATION TO THE FACILITY, WOULD**
4 **DUKE BE REQUIRED TO ENTER INTO A SUBSEQUENT CONTRACT**
5 **WITH THAT QF SELLER?**

6 A. Yes. The Companies do not have any discretion as to whether they are or are not
7 required to purchase power from QFs. If such a situation arose, the Companies
8 would be required under PURPA to enter into a subsequent contract with the QF
9 Seller, with its then accurately-described Facility.

10 **Q. WHY IS WITNESS LEVITAS' PROPOSAL NOT AN ADEQUATE**
11 **SUBSTITUTE FOR THE COMPANIES' MATERIAL ALTERATION**
12 **PROVISION?**

13 A. First, the term "estimated annual energy production" cannot be substituted with
14 "maximum annual energy production." As described earlier and shown in Figures
15 1 and 2, the Companies rely on the estimated annual energy production to establish
16 the proper levelized avoided cost rate for each QF Seller. To replace this value
17 with a maximum production value would not aid the Companies in planning for
18 these generation additions and properly integrating them into its operating plan.
19 While it is recognized that intermittent generation cannot guarantee its hours of
20 operation, nevertheless, the Companies must stand ready at all times to replace this
21 generation whenever it is inoperable. Basic information on the equipment being
22 installed and an indication on its planned operation is essential to reducing the
23 Companies' cost of integrating this resource into the overall operations of the

1 Companies' generation systems. Only knowing an overstated maximum theoretical
2 output, as advocated by SBA Witness Levitas, offers no benefit to the Companies
3 in planning their day-to-day operations. Second, Mr. Levitas' proposal would
4 allow a QF Seller to freely change any portion of its Facility, regardless of the
5 impact on the Companies' systems or on the avoided cost rates paid by customers.

6 **Q. DO YOU AGREE WITH SBA WITNESS LEVITAS THAT THE SOLE**
7 **REASON FOR PREVENTING A CHANGE TO THE FACILITY'S DC**
8 **RATING WOULD BE TO PREVENT THE QF FROM INCREASING ITS**
9 **ENERGY OUTPUT AT A GIVEN AC CAPACITY AND THEREBY**
10 **INCREASING OUTPUT AT PRIOR AVOIDED COST RATES?**

11 A. No. However, as previously noted, under a levelized rate, changes in a QF's
12 delivered generation can adversely impact the economic cost benefit realized by
13 retail customers causing them to pay in excess of the marginal cost benefit they
14 receive. The Companies encourage QFs to evaluate and improve their facilities
15 during the contract term, but believe that if the change is a Material Alteration that
16 the price terms for the changed expectation should be evaluated to hold retail
17 customers harmless.

18 In addition to these price considerations, the Companies also need the
19 opportunity to review their interconnection and supporting transmission and
20 distribution facilities' delivery to ensure adequate capacity is available to meet the
21 QF's changed operations.

1 **Q. DO YOU AGREE WITH SBA WITNESS LEVITAS' COMMENT AT PAGE**
2 **8 THAT A REDUCTION IN DC CAPACITY COULD BE NECESSARY IF**
3 **THE FACILITY FOOTPRINT MUST BE DOWNSIZED DURING THE**
4 **DEVELOPMENT PROCESS AND THAT THIS HAS NO BEARING ON**
5 **THE CONCERNS EXPRESSED BY DUKE AND SHOULD NOT BE**
6 **PROHIBITED OR REQUIRE THE COMPANY'S CONSENT?**

7 A. No. The Companies recognize that changes in facilities may occur when a QF is
8 seeking permits, equipment quotes and installation contracts; however, by the time
9 a PPA is executed and the QF contractually agrees to supply electricity under a
10 PPA, these cost considerations should be known. If circumstances cause significant
11 material changes to the QF's Facility after this contractual commitment occurs, the
12 PPA should be subject to review and updating to ensure that the marginal cost
13 benefit realized by retail customers is consistent with the rate paid to the QF for
14 their altered Facility.

15 **Q. SBA WITNESS LEVITAS RECOMMENDS THAT IF THE COMMISSION**
16 **RETAINS THE CONCEPT OF MATERIAL ALTERATION, IT SHOULD**
17 **BE MODIFIED IN SUCH THAT ANY LIMITATION ON DC RATING**
18 **SHOULD BE EXPRESSED AS A MAXIMUM DC:AC RATIO OF 1.5 (TO**
19 **ALLOW FOR IMPROVEMENTS TO CURRENTLY PREVAILING**
20 **STANDARDS). DO YOU AGREE WITH HIS RECOMMENDATION?**

21 A. No. As discussed earlier, the Companies require a detailed description of the QF's
22 facilities including the AC and DC rating of equipment in order to properly plan
23 and integrate the QF into the utility system. Duke has the same concern with a QF

1 offering a mere indication of a maximum ratio of DC:AC capacity as with only
2 providing a maximum theoretical annual energy production that it is insufficient to
3 support the Companies' planning needs. If a QF wants to significantly alter its
4 facilities, it should contact and receive the utility's consent that the changes are
5 consistent with the QF's contractual commitment.

6 **Q. SBA WITNESS LEVITAS ARGUES THAT IT WOULD BE IMPROPER**
7 **FOR DUKE TO REQUIRE THE UTILITY'S CONSENT FOR ANY**
8 **CHANGES TO A QF SELLER'S FACILITY THAT WOULD ENABLE**
9 **"TIME-SHIFTING" (I.E., CHANGING THE PERIODS DURING WHICH**
10 **A FACILITY PUTS POWER ON THE GRID, GENERALLY TO BETTER**
11 **COINCIDE WITH TIMES OF PEAK DEMAND). WHY SHOULD THE QF**
12 **SELLER BE REQUIRED TO SEEK COMPANY APPROVAL FOR SUCH**
13 **CHANGES?**

14 A. As previously discussed in my example of the impact of the financial consequence
15 of changes in the annual energy production over the contract term, the same risk is
16 borne by retail customers if a QF changes the time of delivery to shift energy from
17 lower rate off-peak hours to higher rate on-peak hours. The levelized rate approach
18 only holds retail customers harmless if the delivered electricity is approximately
19 the same in each contract year. If a QF wants to change its operation during the
20 contract term by the addition of storage facilities to shift delivery into on-peak
21 hours, they should seek the Company's consent to ensure that the changed operation
22 holds retail customers harmless. To do otherwise results in retail customers
23 potentially paying in excess of avoided cost.

1 **Q. DO YOU BELIEVE SUCH CONDITIONS RESULT IN DISCOURAGING**
2 **THE QF SELLER FROM INCORPORATING STORAGE RESOURCES,**
3 **AS ALLEGED BY SBA WITNESS LEVITAS?**

4 A. I do not. The Companies agree with Mr. Levitas that such resources offer numerous
5 benefits, including the potential to mitigate the impacts of solar intermittency and
6 to allow energy to be delivered when it is most needed. The Companies recognize
7 that as the cost of energy storage declines that it will be a greater consideration in
8 future QF projects. When energy storage is proposed for a new project, it can be
9 properly reflected in the rate paid to the QF to ensure that it will properly align with
10 the marginal cost benefit realized over the full contract term. The Companies are
11 only seeking similar treatment for existing facilities that materially alter their
12 Facility during the middle of their contract term to again ensure that the marginal
13 cost benefit aligns properly with the QF rate.

1 **Q. SBA WITNESS LEVITAS ALSO ARGUES THAT THE APPLICATION OF**
2 **THE “MATERIAL ALTERATION” CONCEPT WOULD HAVE THE**
3 **EFFECT OF PROHIBITING MORE THAN A 5% REDUCTION IN**
4 **ANNUAL ENERGY PRODUCTION, WHICH IS UNREASONABLE AND**
5 **UNRELATED TO DUKE’S OBJECTIVE OF ENSURING THAT IT NOT**
6 **BE REQUIRED TO PURCHASE ADDITIONAL ENERGY AT OUT-OF-**
7 **DATE RATES. HE ALSO ARGUES THAT THIS DEPARTS FROM**
8 **DUKE’S LONG-STANDING PRACTICE OF NOT IMPOSING A**
9 **MINIMUM ANNUAL ENERGY PRODUCTION VALUE IN STANDARD**
10 **OFFER PPAS. HOW DO YOU RESPOND TO THIS?**

11 **A.** As I described earlier in my Rebuttal Testimony, the Companies have proposed
12 revisions to the definition of Material Alteration such that a change in annual energy
13 production is not considered a Material Alteration, consistent with ORS Witness
14 Horii’s recommendation. While the Companies do not impose specific penalties
15 for failures to deliver annual energy quantities, it is the Companies’ expectation
16 that the QF will provide an equivalent amount of generation each year based upon
17 the estimated annual energy production stated in the PPA. This would require the
18 QF to make repairs to its facilities should they be damaged or fail to operate in a
19 reasonable manner to fulfill their contractual obligation.

1 **Q. PLEASE EXPLAIN SBA WITNESS LEVITAS' RECOMMENDATION**
2 **THAT THE COMPANIES CONSIDER IMPOSING LIQUATED**
3 **DAMAGES ON STANDARD OFFER QFS THAT FAIL TO ACHIEVE**
4 **COMMERCIAL OPERATION BY AN AGREED UPON DATE.**

5 A. Mr. Levitas recommends that liquidated damages in the amount of \$5,000 per MW
6 should apply if a Standard Offer QF fails to fulfill its commitment to deliver electric
7 power under the Standard Offer PPA.

8 **Q. DO YOU AGREE WITH HIS APPROACH?**

9 A. No. The Companies do not believe imposing liquidated damages under the
10 Standard Offer PPA is appropriate.

11 **Q. WHY DO THE COMPANIES BELIEVE IT IS APPROPRIATE TO IMPOSE**
12 **LIQUIDATED DAMAGES ON QFS SELLING POWER PURSUANT TO**
13 **THE LARGE QF PPA, BUT NOT UNDER THE STANDARD OFFER PPA?**

14 A. The Companies, consistent with guidance from FERC establishing the standard
15 offer requirements, have always recognized differences between QFs selling under
16 the standard offer and QFs selling pursuant to the Large QF PPA. While the
17 Companies believe that at this time, some developers planning 2 MW utility-scale
18 projects under the Standard Offer are just as sophisticated as the developers
19 planning 75 MW projects, there are also smaller Standard Offer Sellers for whom
20 the Companies believe certain accommodations are still appropriate. For example,
21 the Companies do not believe it would be appropriate to impose liquidated damages
22 onto a school district, local government organization or small business that wants
23 to own a small solar facility and sell the power to Duke. While usually such entities

1 prefer to enter into a net metering arrangement with the Companies, the Companies
2 do have standard offer PPAs with such entities. While the aggregate amount of
3 solar anticipated to be sold to the Companies under the standard offer is moderately
4 significant, and failure of such committed solar to become commercially
5 operational has the potential to challenge the Companies' resource planning, the
6 Companies are concerned about imposing liquidated damages on the smaller
7 Sellers described herein. Rather than seeking an arbitrary liquidated damage award
8 as proposed by SBA Witness Levitas, the Companies believe that an appropriate
9 remedy for failure to fulfill the QF's commitment to deliver electric power would
10 be to prohibit QFs from executing a subsequent PPA for the same Facility at an
11 avoided cost rate in excess of the rate in the original executed PPA. The Companies
12 recommend approval of a new Paragraph 1(j) to the Terms and Conditions to reflect
13 this approach. Should the Commission determine that the Companies should
14 impose liquidated damages on Sellers under the standard offer, the Companies are
15 willing to implement this change.

16 **Q. DO YOU BELIEVE THE COMPANIES' STANDARD OFFER PPA AND**
17 **TERMS AND CONDITIONS, AS REVISED IN YOUR REBUTTAL**
18 **TESTIMONY ARE COMMERCIALY REASONABLE, COMPLIANT**
19 **WITH PURPA AND COMPLIANT WITH ACT 62?**

20 A. Yes. The Companies' Standard Offer PPA and Terms and Conditions, as set forth
21 in Wheeler Rebuttal Exhibit No. 1 for DEC and Wheeler Rebuttal Exhibit No. 3 for
22 DEP, are reasonable and will enable QFs selling under Schedule PP to pursue
23 commercially reasonable and efficient investments to operate and maintain their

1 generating facility over the term of the contract. In light of the ORS's general
2 support, Duke requests that the Terms and Conditions be approved as revised to
3 address the ORS's comments. Wheeler Rebuttal Exhibit No. 2 for DEC and
4 Wheeler Rebuttal Exhibit No. 4 for DEP highlights the proposed changes against
5 the current Commission-approved Standard Offer Terms and Conditions for the
6 Purchase of Electric Power for each utility.

7 **III. INTEGRATION SERVICES CHARGE**

8 **Q. PLEASE REINTRODUCE THE PURPOSE OF THE INTEGRATION**
9 **SERVICES CHARGE.**

10 A. As explained more fully in my Direct Testimony and the Direct Testimony of Duke
11 Witnesses Glen Snider and Nick Wintermantel of Astrapé Consulting, the solar
12 Integration Services Charge ("SISC") recovers the Companies' respective costs for
13 increased operating reserves necessitated by the intermittent nature of solar
14 generation. The Integration Services Charge rate included in Schedule PP is set
15 based upon the "average cost" of these additional operating reserves at DEC's and
16 DEP's "Existing plus Transition" level of solar penetrations, as determined in the
17 Astrapé Solar Ancillary Services Study ("Astrapé Study"). My earlier direct
18 testimony addresses how using the average ancillary services costs to develop the
19 Integration Services Charge rate is consistent with the traditional ratemaking
20 principle of cost causation, properly assigns the cost to the solar QF generators
21 causing the increased ancillary services cost to be incurred, and is intended to avoid
22 shifting these costs to the general body of customers.

1 **Q. WHY IS THIS COST BEING REFLECTED AS A DISTINCT CHARGE**
2 **RATHER THAN AS A REDUCTION TO THE AVOIDED COST?**

3 A. It is important to note that intermittent generation imposes a cost on the system and
4 does not avoid a cost that would have been otherwise incurred. Recovery in a
5 separate rate is similar to the recovery of other costs that are caused with the
6 purchase of customer-owned generation such as the Monthly Administrative
7 Charge that recovers billing-related expenses and the DEP power factor charge for
8 the provision of VARs to support QF generation. These costs never would have
9 been incurred except for the installation of the generation.

10 The Integration Services Charge rate design also recognizes that the
11 Companies' ancillary services costs are expected to change in the future based upon
12 factors such as solar penetration levels and geographic diversity of future installed
13 solar, load growth, the Companies' future generation resource mix, as well as the
14 potential impacts of new storage technologies. These changes could cause the
15 average cost of regulation to increase or decrease over time. By reviewing the rate
16 with each avoided cost update, it ensures that QFs pay the actual cost incurred to
17 serve intermittent generation and minimizes subsidization by retail customers.

18 **Q. IS DUKE PROPOSING TO APPLY THE INTEGRATION SERVICES**
19 **CHARGE TO ALL SOLAR GENERATORS?**

20 A. No. As I explained in my Direct Testimony, the Companies propose to apply the
21 Integration Services Charge only prospectively to QFs served under rates approved
22 in this or a subsequent avoided cost proceeding. This means the charge will apply
23 to QFs that either establish a new legally enforceable obligation or otherwise enter

1 into a new PPA on or after November 30, 2018. Even though this cost is generally
2 caused by all uncontrolled intermittent generators, Duke has not proposed to apply
3 this charge retrospectively to earlier QFs, since the Integration Services Charge cost
4 was not known at the time those earlier QFs executed PPAs. Fixing a rate that
5 charges average costs, but excludes all pre-existing QF PPAs, necessarily results in
6 only partial recovery of the costs being incurred in the near term, and results in
7 some subsidization of solar QFs by the general body of customers. However, all
8 solar QFs that prospectively enter a new PPA will be subject to the Integration
9 Services Charge, including QFs with expiring PPAs who opt to enter into a new
10 PPA with the Companies. The Companies believe this approach of exempting solar
11 generators that committed to sell their output to Duke prior to November 30, 2018,
12 is reasonable based upon current circumstances.

13 **Q. WHAT STEPS HAVE BEEN TAKEN TO MITIGATE THE IMPACT OF**
14 **FUTURE UPDATES TO THE AVERAGE INTEGRATION SERVICES**
15 **CHARGE IN NEW PPAS?**

16 A. The proposed rate design includes a cap or maximum rate that can apply to PPAs
17 executed under rates approved in this proceeding. The cap will offer solar
18 generators financial protection against undue increases in the Integration Services
19 Charge over time during their initial contract term. The cap on future increases to
20 the Integration Services Charge is set at the incremental or marginal ancillary
21 services cost rate for the last 100 MW of solar generation forecasted to be installed
22 during the vintage period under the Companies' Integrated Resource Plans
23 ("IRPs"). Since these costs are caused by all intermittent generation, the

1 Companies recommend that they be recovered via an average rate to ensure that the
2 generator will not shift these costs to the general body of customers once the rate is
3 fully phased-in for all intermittent generators. In conjunction with recovering these
4 costs at the average rate, the use of a marginal cost-based rate cap offers protection
5 for the generator against unlimited changes to the cost during the QF's contract
6 term. While application of the rate cap could result in subsidization of the cost by
7 retail customers in the future, I believe this approach is fair to all parties and places
8 minimal risk on ratepayers whose possible overpayment to QFs can be addressed
9 when an existing QF elects to enter into a new PPA upon expiration of its original
10 agreement.

11 **Q. PLEASE EXPLAIN THE DISTINCTION BETWEEN AVERAGE AND**
12 **INCREMENTAL COST AS IT RELATES TO INTERMITTENT**
13 **GENERATION.**

14 A. It is important to clearly understand the difference between average and incremental
15 cost of serving intermittent generation. The average cost represents the increase in
16 ancillary services cost that results from serving all intermittent resources. The
17 Companies' studies have found that this is not a linear function; therefore, this cost
18 increases more rapidly with the addition of new intermittent resources.
19 Furthermore, with non-linear costs the "average" cost is far more stable than the
20 "incremental" costs. As a result, the utilization of an average cost rather than
21 incremental cost will ensure that all cost causers (e.g. solar facilities) pay an equal
22 share of the average cost. This will also dampen the volatility of the SISC being
23 assigned to any individual solar generator over time.

1 Applying the SISC based upon an average rate assigned to all solar
2 generators is also appropriate because the Companies were unaware of the full cost
3 impact until there was sufficient intermittent generation to cause an increase in
4 operating reserve requirements. Now the Companies propose to assign the cost
5 equally to all cost causers. If all intermittent generators paid the average SISC rate,
6 there would also be no cost shifted for recovery from retail customers.

7 The incremental cost is the actual increase in ancillary services cost caused
8 directly by the new intermittent generator. If all new intermittent generators paid
9 this rate, there would be no cost shifted for recovery from retail customers, but the
10 existing ancillary services cost from interconnection with prior intermittent
11 generators would continue to be subsidized by retail customers. By setting the rate
12 cap at the incremental rate, the new generator will not require subsidization during
13 its contract term since it will potentially pay its full cost impact even if the average
14 rate continues to increase.

15 **Q. DO YOU AGREE WITH ORS WITNESS HORII'S STATEMENT THAT**
16 **CHARGING THE AVERAGE RATE SOCIALIZES THE COST OVER**
17 **BOTH NEW AND EXISTING SOLAR RESOURCES AND SUBSIDIZES**
18 **NEW GENERATION?**

19 A. No. It is important to recognize that Duke is not recommending that the monthly
20 Integration Services Charge rate be set at the higher "incremental" or marginal cost
21 level because the cost is caused by all uncontrolled intermittent generators and will
22 eventually be paid by all intermittent generators as the rate is phased-in with newly-
23 executed PPAs. However, the cost impact experienced during the review period as

1 new intermittent generation is added up to the point in time when the Companies'
2 ancillary services costs are again reviewed in the next proceeding is equivalent to
3 the marginal or "incremental" ancillary services cost associated with this added
4 generation. The Companies believe that collection of an average cost rate is a fair
5 balance of generator and ratepayer interests and, additionally, that the marginal cost
6 rate cap mitigates financial risk for the generator against undue cost impacts in the
7 future.

8 **Q. DO YOU BELIEVE THAT THE INTEGRATION SERVICES CHARGE IS**
9 **REASONABLE, AND SHOULD BE APPROVED BY THE COMMISSION?**

10 A. Yes. The Integration Services Charge is a reasonable and necessary charge that
11 fairly recovers the increased ancillary services costs caused by intermittent solar
12 generators that customers would otherwise pay.

13 **IV. CONCLUSION**

14 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

15 A. Yes, it does.

TERMS AND CONDITIONS FOR THE PURCHASE OF ELECTRIC POWER
South Carolina

1. PURCHASE POWER AGREEMENT

These “Terms and Conditions” provide a mechanism through which Duke Energy Carolinas, LLC, hereafter called “Company,” will agree to purchase energy or capacity or both from an Eligible Qualifying Facility as defined in the Schedule PP (SC) Purchased Power. The Purchase Power Agreement is solely for the purchase of electricity produced by Seller’s generation, net of generator auxiliary requirement, and does not provide for the sale of any electric service by Company to Seller.

- (a) Description - The Purchase Power Agreement (hereinafter sometimes termed “Agreement”) shall consist of (1) Company’s form of Purchase Power Agreement when signed by Seller and accepted by Company, (2) the applicable Schedule for the purchase of electricity as specified in the Purchase Power Agreement, and (3) these Terms and Conditions for the Purchase of Electric Power (hereinafter referred to as “Terms and Conditions”), and all changes, revisions, alterations therein, or substitutions therefor lawfully made.
- (b) Application of Terms and Conditions and Schedules - All Purchase Power Agreements in effect at the effective date of this tariff or that may be entered into in the future, are made expressly subject to these Terms and Conditions, and subject to all applicable Schedules as specified in the Purchase Power Agreement, and any changes therein, substitutions thereof, or additions thereto lawfully made, provided no change may be made in rates or in essential terms and conditions of this contract except by agreement of the parties to this contract or by order of the state regulatory authority having jurisdiction (hereinafter “Commission”).
- (c) Conflicts - In case of conflict between any provision of a Schedule and of these Terms and Conditions, the provision of the Schedule shall prevail.
- (d) Waiver - The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
- (e) Assignment of Agreement - A Purchase Power Agreement between Company and Seller may be transferred and assigned by Seller to any person, firm, or corporation purchasing or leasing and intending to continue the operation of the plant or business which is interconnected under such Agreement, subject to the written approval of Company. A Purchase Power Agreement shall not be transferred and assigned by Seller to any person, firm, or corporation that is party to any other purchase agreement under which a party sells or seeks to sell power to Company from another Qualifying Facility that is located within one-half mile, as measured from the electrical generating equipment. Company will grant such approval upon being reasonably satisfied that the assignee will fulfill the terms of the Agreement and if, at Company’s option, a satisfactory guarantee for the payment of any applicable bills is furnished by assignee. However, before such rights and obligations are assigned, the assignee must first obtain necessary approval from all regulatory bodies including, but not limited to, the Commission.
- (f) Notification of Assignment, Transfer or Sale - In the event of an assignment of the rights and obligations accruing to Seller under this Agreement, or in the event of any contemplated sale, transfer or assignment of the Facility, Seller shall, in addition to obtaining the approvals hereof, provide a minimum of 30 days prior written notice advising Company of any plans for such an assignment, sale or transfer.
- (g) Suspension of Sales Under Agreement at Seller's Request - If Seller is temporarily unable to produce the electricity contracted for due to physical destruction of, or damage to, his premises,

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South Carolina

Company will, upon written request of Seller, and for a period Company deems as reasonably required to replace or repair such premises, suspend billing under the Agreement, exclusive of any Monthly Facilities Charges, effective with the beginning of the next sales period.

- (h) Termination of Agreement at Seller's Request - If Seller desires to terminate the Agreement, Company will agree to such termination if all bills for services previously rendered to Seller including any termination or other charges applicable under any Interconnection Agreement, plus any applicable termination charges, have been paid. Termination charges shall consist of any applicable termination charges for premature termination of capacity as set forth in paragraphs 4 and 6 of these Terms and Conditions. Company may waive the foregoing provision if Company has secured or expects to secure from a new occupant or operator of the premises an Agreement satisfactory to Company for the delivery of electricity to Company for a term not less than the unexpired portion of Seller's Agreement.
- (i) Company's Right to Terminate or Suspend Agreement – Company, in addition to all other legal remedies, may either terminate the Agreement or suspend purchases of electricity from Seller based on any of the following: (1) default or breach of the Agreement by Seller, (2) any fraudulent or unauthorized use of Company's meter, (3) failure to pay any applicable bills when due and payable, (4) any Material Alteration to the Facility without Company's consent, (5) any condition on Seller's side of the point of delivery actually known by Company to be, or which Company reasonably anticipates may be, dangerous to life or property, or (6) Seller's failure to deliver energy to Company for six (6) consecutive months. Termination of the Agreement shall be at Company's sole option and is only appropriate when Seller either cannot or will not cure its default.

No such termination or suspension, however, will be made by Company without written notice delivered to Seller, personally or by mail, stating what in particular in the Agreement has been violated, except that no notice need to be given in instances set forth in 1(i)(2) or 1(i)(5) above. For violations of Section 1(i)(1) and 1(i)3-4, Seller shall have thirty (30) calendar days after Seller's receipt of Company's written notice to cure the violation; for violations of Section 1(i)(6) Seller shall have five (5) calendar days after Seller's receipt of Company's written notice to cure the violation.

Failure of Company to terminate the Agreement or to suspend the purchase of electricity at any time after the occurrence of grounds therefor, or to resort to any other legal remedy or to exercise any one or more of such alternative remedies, shall not waive or in any manner affect Company's right later to resort to any one or more of such rights or remedies on account of any such ground then existing or which may subsequently occur.

Any suspension of the purchase of electricity by Company or termination of the Agreement upon any authorized grounds shall in no way operate to relieve Seller of Seller's liability to compensate Company for services and/or facilities supplied, nor shall it relieve Seller (1) of Seller's liability for the payment of minimum monthly charges during the period of suspension, nor (2) of Seller's liability for damages, if the Agreement has been terminated, in the amount of (a) the minimum monthly charges which would have been payable during the unexpired term of the Agreement plus (b) the Early Contract Termination charge as set forth in these Terms and Conditions.

- (j) Seller's Failure to Fulfill Commitment – Seller's that fail to fulfill the commitment to deliver electric power established in either a Legally Enforceable Obligation to Purchase or an executed Purchase Power Agreement shall be precluded from executing a new Agreement at a higher rate at the same location for the full term of the original contractual commitment.

TERMS AND CONDITIONS FOR THE PURCHASE OF ELECTRIC POWER
South Carolina

2. CONDITIONS OF SERVICE

- (a) Company is not obligated to purchase electricity from Seller unless and until: (1) Company's form of Purchase Power Agreement is executed by Seller and accepted by Company; (2) in cases where it is necessary to cross private property to accept delivery of electricity from Seller, Seller conveys or causes to be conveyed to Company, without cost to Company, a right-of-way easement, satisfactory to Company, across such private property which will provide for the construction, maintenance, and operation of Company's lines and facilities, necessary to receive electricity from Seller; provided, however, in the absence of a formal conveyance, Company nevertheless, shall be vested with an easement over Seller's premises authorizing it to do all things necessary including the construction, maintenance, and operation of its lines and facilities for such purpose; and (3) any inspection certificates or permits that may be required by law in the local area are furnished to Company. Where not required by law, an inspection by a Company-approved inspector shall be made at Seller's expense. In the event Seller is unable to secure such necessary rights of way, Seller shall reimburse Company for all costs Company may incur for the securing of such rights of way.

The obligation of Company in regard to service under the Agreement are dependent upon Company securing and retaining all necessary rights-of-way, privileges, franchises, and permits, for such service. Company shall not be liable to any Seller in the event Company is delayed or prevented from purchasing power by Company failure to secure and retain such rights-of-way, privileges, franchises, and permits.

- (b) Seller shall operate its Facility in compliance with all: (i) System Operator Instructions provided by Company, including any Energy Storage Protocols provided to Seller which have been approved by the Commission, if applicable; (ii) applicable operating guidelines established by the North American Electric Reliability Corporation ("NERC"); and (iii) the SERC Reliability Corporation ("SERC") or any successor thereto.
- (c) Seller shall submit an Interconnection Request as set forth in the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections. Company shall not be required to install facilities to support interconnection of Seller's generation or execute the Purchase Power Agreement until Seller has signed an Interconnection Agreement as set forth in the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as may be required by Company.
- (d) If electricity is received through lines which cross the lands of the United States of America, a state, or any agency or subdivision of the United States of America or of a state, Company shall have the right, upon 30 days' written notice, to discontinue receiving electricity from any Seller or Sellers interconnected to such lines, if and when (1) Company is required by governmental authority to incur expenses in the relocation or the reconstruction underground of any portion of said lines, unless Company is reimbursed for such expense by Sellers or customers connected thereto, or (2) the right of Company to maintain and operate said lines is terminated, revoked, or denied by governmental authority for any reason.

3. DEFINITIONS

- (a) "Auxiliary Load" shall mean power used to operate auxiliary equipment in the Facility necessary for power generation (such as pumps, blowers, fuel preparation machinery, and exciters).

TERMS AND CONDITIONS FOR THE PURCHASE OF ELECTRIC POWER
South Carolina

- (b) “Company’s conductors” shall mean Company’s wires extending from the point of connection with Company’s existing electric system to the point of delivery.
- (c) “Energy Storage Protocol” shall have the meaning specified in the Purchase Power Agreement.
- (d) “Facility” shall have the meaning specified in the Purchase Power Agreement.
- (e) “Interconnection” shall mean the connection of Company’s conductors to Seller’s conductors.
- (f) “Material Alteration” as used in this Agreement shall mean a modification to the Facility which renders the Facility description specified in this Agreement inaccurate in any material sense as determined by Company in a commercially reasonable manner including, without limitation, (i) the addition of a Storage Resource; (ii) a modification which results in an increase to the Contract Capacity, Nameplate Capacity (in AC or DC), generating capacity (or similar term used in the Agreement) (collectively the “Existing Capacity”), or (iii) a modification which results in a decrease to the Existing Capacity by more than five (5) percent. Notwithstanding the foregoing, the repair or replacement of equipment at the Facility (including solar panels) with like-kind equipment, which does not increase Existing Capacity, or decrease the Existing Capacity by more than five percent (5%), shall not be considered a Material Alteration.
- (g) “Nameplate Capacity” shall mean the manufacturer’s kW_{AC} nameplate rated output capability of the Facility as measured at the delivery point specified in AC. For multi-unit generator facilities, the “Nameplate Capacity” of the Facility shall be the sum of the individual manufacturer’s kW_{AC} nameplate rated output capabilities of the generators. The Nameplate Capacity shall also include the DC rating of the Facility. For inverted-based generating facilities, the “Nameplate Capacity” shall be the manufacturer’s rated kW_{AC} output on the inverters.
- (h) “Prudent Utility Practice” means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgement and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.
- (i) “Purchase” or “Purchase of electricity” shall be construed to refer to the electricity supplied to Company by Seller from the Facility.
- (j) “Seller’s conductors” shall mean Seller’s wires extending from the point of delivery to the switch box or other point where Seller’s circuits connect for the purpose of supplying the electricity produced by Seller.
- (k) “Storage Resource” means battery storage or other energy storage device installed at or connected behind the meter of the Facility.

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- (l) "System Operator Instruction" means any order, action, requirement, demand, or direction, from the system operator in accordance with Prudent Utility Practice, and delivered to Seller in a non-discriminatory manner, to operate, manage and/or otherwise maintain safe and reliable operations of the system, including, without limitation, an order to suspend or interrupt any operational activity due to an emergency condition or force majeure event; provided however, a System Operator Instruction in response to an emergency condition, force majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.

4. CONTRACT CAPACITY

- (a) The Contract Capacity shall be specified in the Purchase Power Agreement and shall not exceed the capacity specified in Seller's Interconnection Agreement. This term shall mean the maximum continuous electrical output capability expressed on an alternating current basis of the generator(s) at any time, at a power factor of approximately unity, without consuming VARs supplied by Company, as measured at the Point of Delivery and shall be the maximum kW_{AC} delivered to Company during any billing period. Seller shall not exceed the Contract Capacity unless and until the increase has been agreed to in an amendment executed by Company and Seller and Seller's facilities have been upgraded to accept the actual or requested increase as may be required by Company in its commercially reasonable discretion.
- (b) Seller shall not change the Contract Capacity (AC or DC), without adequate notice to Company, and without receiving Company's prior written consent, and if such unauthorized increase causes loss of or damage to Company's facilities, the cost of making good such loss or repairing such damage shall be paid by Seller.
- (c) Company may require that a new Contract Capacity be determined when it reasonably appears that the capacity of Seller's generating facility or annual energy production will deviate from contracted or established levels for any reason, including, but not limited to, a change in water flow, steam supply, or fuel supply.
- (d) Seller may apply to Company to increase the Contract Capacity during the Contract Period and, upon approval by Company and execution of an amendment to implement the change by Company and Seller, future Monthly delivered capacities shall not exceed the revised Contract Capacity. If such increase in Contract Capacity results in additional costs associated with redesign or a resizing of Company's facilities, such additional costs to Seller shall be determined in accordance with the Interconnection Agreement.
- (e) Any Material Alteration to the Facility, including without limitation, an increase in the Existing Capacity or a decrease in the Existing Capacity by more than five (5) percent or the addition of energy storage capability, shall require the prior written consent of Company, which may be withheld in Company's sole discretion, and shall not be effective until memorialized in an amendment executed by Company and Seller.

5. ESTIMATED ANNUAL ENERGY PRODUCTION

The estimated annual energy production from the Facility specified in the Purchase Power Agreement shall be the estimated total annual kilowatt-hours registered or computed by or from Company's metering facilities for each time period during a continuous 12-month interval.

TERMS AND CONDITIONS FOR THE PURCHASE OF ELECTRIC POWER
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6. EARLY CONTRACT TERMINATION

Early Contract Termination - If Seller terminates the Agreement, or the Agreement is terminated by Company as permitted in Section 1(i) prior to the expiration of the initial (or extended) term of the Purchase Power Agreement, the following payment shall be made to Company by Seller:

Seller shall pay to Company the total Energy and/or Capacity credits received in excess of the sum of what would have been received under the Variable Rate for Energy and/or Capacity Credits applicable at the initial term of the contract period and as updated every two years, plus interest. The interest should be the weighted average rate for new debt issued by Company in the calendar year previous to that in which the Agreement was commenced.

7. CONTRACT RENEWAL

This Agreement shall be subject to renewal for subsequent term(s) at the option of Company on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration Company's then avoided cost rates and other relevant factors, or (2) set by arbitration.

8. QUALITY OF ENERGY RECEIVED

- (a) Seller has full responsibility for the routine maintenance of its generating and protective equipment to insure that reliable, utility grade electric energy is being delivered to Company.
- (b) The Facility shall be operated in such a manner as to generate reactive power as may be reasonably necessary to maintain voltage levels and reactive area support as specified by Company. Any operating requirement is subject to modification or revision if warranted by future changes in the distribution or transmission circuit conditions.
- (c) Seller may operate direct current generators in parallel with Company through a synchronous inverter. The inverter installation shall be designed such that a utility system interruption will result in the removal of the inverter infeed into Company's system. Harmonics generated by a DC generator-inverter combination must not adversely affect Company's supply of electric service to, or the use of electric service by Company's other customers, and any correction thereof is the full responsibility of Seller.
- (d) In the event Company determines, based on calculations, studies, analyses, monitoring, measurement or observation, that the output of the Facility will cause or is causing Company to be unable to provide proper voltage levels to its customers, Seller shall be required to comply with a voltage schedule and/or reactive power output schedule as prescribed by Company.
- (e) All Material Alterations to the Facility shall require the prior written consent from Company, and Seller shall provide Company written notification of any requested changes to the Facility, support equipment such as inverters, or interconnection facilities as soon as reasonably possible to allow Company adequate time to review such requested changes to ensure continued safe interconnection prior to implementation.
- (f) Failure of Seller to comply with either (a), (b), (c), (d) or (e) above will constitute grounds for Company to cease parallel operation with Seller's generation equipment and constitute grounds for termination or suspension of the Agreement as set forth under paragraph 1 above.

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9. BILLING

- (a) Meters will be read and bills rendered monthly. Readings are taken each month at intervals of approximately thirty (30) days.
- (b) If Company is unable to read its purchase meter for any reason, Seller's production may be estimated by Company on the basis of Seller's production during the most recent preceding billing period for which readings were obtained, unless some unusual condition is known to exist. A bill or payment rendered on the basis of such estimate shall be as valid as if made from actual meter readings.
- (c) The term "Month" or "Monthly", as used in Company's Schedules and Riders, refers to the period of time between the regular meter readings by Company, except that if the period covered by an initial or final bill, or due to rerouting of the meter reading schedule, is more than 35 or less than 25 days, the bill will be prorated based on a 30-day billing month.
- (d) Payments for capacity and/or energy will be made to Seller based on the rate schedule stated in the Purchase Power Agreement.
- (e) Company reserves the right to set off against any amounts due from the Company to Seller, any amounts which are due from Seller to Company, including, but not limited to, unpaid charges pursuant to the Interconnection Agreement or past due balances on any accounts Seller has with Company for other services.

10. RECORDS

In addition to the regular meter readings to be taken monthly for billing purposes, Company may require additional meter readings, records, transfer of information, etc. as may be agreed upon by the Parties. Company reserves the right to provide to the Commission or the FERC or any other regulatory body, upon request, information pertaining to this Agreement, including but not limited to: records of the Facility's generation output and Company's purchases thereof (including copies of monthly statements of power purchases and data from load recorders and telemetering installed at the Facility); copies of this Agreement. Company will not provide any information developed solely by Seller and designated by Seller in writing to be "proprietary" unless required to do so by order of the Commission or the FERC or any other regulatory body or court, in which event, Company will notify Seller prior to supplying the proprietary information.

Seller shall provide to Company, on a monthly basis within ten (10) days of the meter reading date and in form to be mutually agreed upon by the Parties, information on the Facility's fuel costs (coal, oil, natural gas, supplemental firing, etc.), if any, for the power delivered to the Company during the preceding month's billing period.

11. METER STOPPAGE OR ERROR

In the event a meter fails to register accurately within the allowable limits established by the state regulatory body having jurisdiction, Company will adjust the measured energy for the period of time the meter was shown to be in error, and shall, as provided in the rules and regulations of the state regulatory body having jurisdiction, pay to Seller, or Seller shall refund to Company, the difference between the amount billed and the estimated amount which would have been billed had the meter accurately registered the kilowatt hours provided by Seller. No part of any minimum service charge shall be refunded.

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12. POINT OF DELIVERY

The point of delivery is the point where Company's conductors are, or are to be, connected to Seller's conductors. Seller shall do all things necessary to bring its conductors to such point of delivery for connection to Company's conductors, and shall maintain said conductors in good order at all times. If Seller chooses to deliver power to Company through a point of delivery where Seller presently receives power from Company, then the point of delivery for the purchase of generation shall be the same point as the point of delivery for electric service.

13. INTERCONNECTION FACILITIES

If Seller is not subject to the terms and conditions of the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as approved by the Commission in Docket No. 2015-362-E, Order No. 2016-191 the following conditions shall apply to Interconnection Facilities necessary to deliver Seller's electricity to Company. Otherwise, the terms and conditions of the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as approved by the Commission in Docket No. 2015-362-E, Order No. 2016-191 govern.

- (a) By Company: Company shall install, own, operate, maintain, and otherwise furnish all lines and equipment located on its side of the point of delivery to permit parallel operation of Seller's facilities with Company's system. It shall also install and own the necessary metering equipment, and meter transformers, where necessary, for measuring the electricity delivered to Company, though such meter may be located on Seller's side of the point of delivery. Interconnection facilities, installed by either Company or Seller, solely for such purpose, include, but are not limited to connection, line extension, transformation, switching equipment, protective relaying, metering, telemetering, communications, and appropriate safety equipment.

Any interconnection facilities installed by Company necessary to receive power from Seller shall be considered Interconnection Facilities and shall be provided, if Company finds it practicable, under the following conditions:

- (1) The facilities will be of a kind and type normally used by or acceptable to Company and will be installed at a place and in a manner satisfactory to Company.
- (2) Seller will pay to Company a Monthly Interconnection Facilities Charge based on 1.0 percent of the estimated original installed cost and rearrangement cost of all facilities, including metering, required to accept interconnection, but not less than \$25 per month; however, the \$25 minimum will not apply when the Interconnection Facilities consist only of the meter. The monthly charge for the Interconnection Facilities to be provided under this Agreement is subject to the rates, Service Regulations and conditions of Company as the same are now on file with the Commission and may be changed or modified from time to time upon approval by the Commission. Any such changes or modifications, including those which may result in increased charges for the Interconnection Facilities to be provided by Company, shall be made a part of this Agreement to the same effect as if fully set forth herein.
- (3) If Company increases its investment in interconnection facilities or other special facilities required by Seller (including conversion of Company's primary voltage to a higher voltage), the Monthly Interconnection Facilities Charge for providing the additional facilities will be adjusted at that time. If the Monthly Interconnection Facilities Charge

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increases, Seller may terminate the Interconnection Facilities in accordance with the applicable termination paragraph 1 above, or continue Interconnection Facilities under the changed conditions.

- (4) In lieu of the Monthly Interconnection Facilities Charge of 1.0 percent, Seller may elect to make a contribution equal to the total interconnection facilities investment, plus associated tax gross-ups. In lieu of the monthly charge above, at Company's option, Customer may elect to be billed under an alternative payment option to the 1.0 percent per month. Under such option, the payment must be renewed after each thirty-four (34) year period.
 - (5) The Monthly Interconnection Facilities Charge as determined shall continue regardless of the term of the Agreement until Seller no longer has need for such facilities. In the event Seller's interconnection facilities should be discontinued or terminated in whole or in part, such discontinuation or termination should be calculated in accordance with 1, above.
 - (6) Seller's wiring and appurtenant structures shall provide for the location, connection, and installation of Company's standard metering equipment or other equipment deemed necessary by Company for the metering of Seller's electrical output. Company shall, at its expense, be permitted to install, in Seller's wiring or equipment, any special metering devices or equipment as deemed necessary for experimental or monitoring purposes.
 - (7) Company shall furnish and install the Interconnection Facilities no later than the date requested by Seller for such installation. Seller's obligation to pay the Interconnection Facilities charges shall begin upon the earlier of (1) completion of the installation but no earlier than the requested in-service date specified in the Interconnection Agreement or (2) the first date when energy is generated and delivered to Company, and such charges shall apply at all times thereafter during the term of this Agreement, whether or not Seller is actually supplying electric power to Company.
- (b) By Seller: Seller shall install, own, operate, and maintain all lines, and equipment, exclusive of Company's meter and meter transformers, on Seller's side of the point of delivery. Seller will be the owner and have the exclusive control of, and responsibility for, all electricity on Seller's side of the point of delivery. Seller must conform to the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections. Seller's wiring shall be arranged such that all electricity generated for sale can be supplied to one point of delivery and measured by a single meter. Company's meter may be located on Seller's side of the point of delivery, and when it is to be so located, Seller must make suitable provisions in Seller's wiring, at a place suitable to Company, for the convenient installation of the type of meter Company will use. All of Seller's conductors installed on Company's side of the meter and not installed in conduit must be readily visible.

Seller shall install and maintain devices adequate to protect Seller's equipment against irregularities on Company's system, including devices to protect against single-phasing. Seller shall also install and maintain such devices as may be necessary to automatically disconnect Seller's generating equipment, which is operated in parallel with Company, when service provided by Seller is affected by electrical disturbances on Company's or Seller's systems, or at any time when Company's system is de-energized from its prime source.

- (c) Access to Premises: The duly authorized agents of Company shall have the right of ingress and egress to the premises of Seller at all reasonable hours for the purpose of reading meters, inspecting Company's wiring and apparatus, changing, exchanging, or repairing Company's

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property on the premises of Seller, or removing such property at the time of or at any time after suspension of purchases or termination of this Agreement.

- (d) Protection: Seller shall protect Company's wiring and apparatus on Seller's premises and shall permit no one but Company's agents to handle same. In the event of any loss of or damage to such property of Company caused by or arising out of carelessness, neglect, or misuse by Seller or Seller's employees or agents, the cost of making good such loss or repairing such damage shall be paid by Seller. In cases where Company's service facilities on Seller's premises require abnormal maintenance due to Seller's operation, Seller shall reimburse Company for such abnormal maintenance cost.

14. CONTINUANCE OF PURCHASES AND LIABILITY THEREFOR

The Parties do not guarantee continuous service but shall use reasonable diligence at all times to provide for uninterrupted acceptance and supply of electricity. Each Party shall at all times use reasonable diligence to provide satisfactory service for the acceptance or supply of electricity, and to remove the cause or causes in the event of failure, interruption, reduction or suspension of service for the acceptance or supply of electricity, but neither Party shall be liable for any loss or damage resulting from such failure, interruption, reduction or suspension of service, nor shall same be a default hereunder, when any interruption of service for the acceptance or supply of electricity is due to any of the following:

- (a) An emergency condition or action due to an adverse condition, event, and/or disturbance on Company's system, or on any other system directly or indirectly interconnected with it, which requires automatic or manual interruption of the supply of electricity to some customers or areas, or automatic or manual interruption, reduction, or cessation of the acceptance of electricity into Company's electrical system in order to limit the occurrence of or extent or damage of the adverse condition or disturbance to Company's system or capability to reliably provide service in compliance and accordance with prudent practices, regulatory requirements, and/or reliability standards, or to prevent damage to generating or transmission facilities, or to expedite restoration of service, or to effect a reduction in service to compensate for an emergency condition on an interconnected system. An emergency condition or action shall include any circumstance that requires action by Company to comply with any electric reliability organization or NERC/SERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to Seller's Facility, reliability impairment, loss or damage to Company's system, disruption of generation by Seller, disruption of reliability or service on Company's system, an abnormal condition on the system, and/or endangerment to human life or safety.
- (b) An event or condition of force majeure, as described below.
- (c) Making necessary adjustments to, changes in, or repairs on Company lines, substations, and facilities, and in cases where, in its opinion, the continuance of service from Seller's premises would endanger persons or property.

Seller shall be responsible for promptly taking all actions requested or required by Company to avoid, prevent, or recover from the occurrence and/or imminent occurrence of any emergency condition and in response to any emergency condition or condition of force majeure, including without limitation installing and operating any equipment necessary to take such actions.

Seller shall be responsible for ensuring the safe operation of its equipment at all times, and will install and maintain, to Company's satisfaction, the necessary automatic equipment to prevent the back feed

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of power into, or damage to Company's de-energized system, and shall be subject to immediate disconnection of its equipment from Company's system if Company determines that such equipment is unsafe or adversely affects Company's transmission/distribution system or service to its other customers.

Seller assumes responsibility for and shall indemnify, defend, and save Company harmless against all liability, claims, judgments, losses, costs, and expenses for injury, loss, or damage to persons or property including personal injury or property damage to Seller or Seller's employees on account of defective construction, wiring, or equipment, or improper or careless use of electricity, on Seller's side of the point of delivery.

15. FORCE MAJEURE

Circumstances beyond the reasonable control of a Party which solely cause that Party to experience delay or failure in delivering or receiving electricity or in providing continuous service hereunder, including: acts of God; unusually severe weather conditions; earthquake; strikes or other labor difficulties; war; riots; fire; requirements shall be deemed to be "events or conditions of force majeure." It also includes actions or failures to act on the part of governmental authorities (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state or local government bodies), but only if such requirements, actions or failures to act prevent or delay performance; or transportation delays or accidents. Events or conditions of force majeure do not include such circumstances which merely affect the cost of operating the Facility.

Neither Party shall be responsible nor liable for any delay or failure in its performance hereunder due solely to events or conditions of force majeure, provided that:

- (a) The affected Party gives the other Party written notice describing the particulars of the event or condition of force majeure, such notice to be provided within forty-eight (48) hours of the determination by the affected Party that an event or condition of force majeure has occurred, but in no event later than thirty (30) days from the date of the occurrence of the event or condition of force majeure;
- (b) The delay or failure of performance is of no longer duration and of no greater scope than is required by the event or condition of force majeure, provided that in no event shall such delay or failure of performance extend beyond a period of twelve (12) months;
- (c) The affected Party uses its best efforts to remedy its inability to perform;
- (d) When the affected Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party prompt written notice to that effect; and,
- (e) The event or condition of force majeure was not caused by or connected with any negligent or intentional acts, errors, or omissions, or failure to comply with any law, rule, regulation, order or ordinance, or any breach or default of this Agreement.

16. INSURANCE

Seller shall obtain and retain, for as long as the generation is interconnected with Company's system, either the applicable home owner's insurance policy with liability coverage of at least \$100,000 per occurrence or the applicable comprehensive general liability insurance policy with liability coverage in the amount of at least \$300,000 per occurrence, which protects Seller from claims for bodily injury and/or property damage. This insurance shall be primary for all purposes. Seller shall provide

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certificates evidencing this coverage as required by Company. Company reserves the right to refuse to establish, or continue the interconnection of Seller's generation with Company's system, if such insurance is not in effect.

17. GOVERNMENTAL RESTRICTIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either party or over this Agreement. This Agreement shall not become effective until all required governmental authorizations are obtained. Certification of receipt of all permits and authorizations shall be furnished by Seller to Company upon Company's request. This Agreement shall not become effective unless it and all provisions thereof are authorized and permitted by such governmental agencies without change or conditions.

This Agreement shall at all times be subject to changes by such governmental agencies, and the parties shall be subject to conditions and obligations, as such governmental agencies may, from time to time, direct in the exercise of their jurisdiction, provided no change may be made in rates or in essential terms and conditions of this contract except by agreement of the parties to this contract. Both parties agree to exert their best efforts to comply with all of the applicable rules and regulations of all governmental agencies having control over either party or this Agreement. The parties shall take all reasonable action necessary to secure all required governmental approval of this Agreement in its entirety and without change.

The delivery date, quantity, and type of electricity to be accepted for purchase by Company, from Seller, are subject to changes, restrictions, curtailments, or complete suspensions by Company as may be deemed by it to be necessary or advisable (a) on account of any lawful order or regulation of any municipal, State, or Federal government or agency thereof, or order of any court of competent jurisdiction, or (b) on account of any emergency due to war, or catastrophe, all without liability on the part of Company therefor.

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1. PURCHASE POWER AGREEMENT

These “Terms and Conditions” provide a mechanism through which Duke Energy Carolinas, LLC, hereafter called ~~the~~ “Company,” will agree to purchase energy or capacity or both from an Eligible Qualifying Facility as defined in the ~~Purchased Power~~ Schedule PP (SC) Purchased Power. ~~This~~The Purchase Power Agreement is solely for the purchase of electricity produced by Seller’s generation, net of generator auxiliary requirement, and does not provide for the sale of any electric service by ~~the~~ Company to ~~the~~ Seller.

- (a) Description - The Purchase Power Agreement (hereinafter sometimes termed “Agreement”) shall consist of (1) ~~the~~ Company’s form of Purchase Power Agreement when signed by Seller and accepted by ~~the~~ Company, (2) the applicable Schedule for the purchase of electricity as specified in the Purchase Power Agreement, and (3) these Terms and Conditions for the Purchase of Electric Power (hereinafter referred to as “Terms and Conditions”), and all changes, revisions, alterations therein, or substitutions therefor lawfully made.
- (b) Application of Terms and Conditions and Schedules - All Purchase Power Agreements in effect at the effective date of this tariff or that may be entered into in the future, are made expressly subject to these Terms and Conditions, and subject to all applicable Schedules as specified in the Purchase Power Agreement, and any changes therein, substitutions thereof, or additions thereto lawfully made, provided no change may be made in rates or in essential terms and conditions of this contract except by agreement of the parties to this contract or by order of the state regulatory authority having jurisdiction (hereinafter “Commission”).
- (c) Conflicts - In case of conflict between any provision of a Schedule and of these Terms and Conditions, the provision of the Schedule shall prevail.
- (d) Waiver - The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
- (e) Assignment of Agreement - A Purchase Power Agreement between ~~the~~ Company and ~~the~~ Seller may be transferred and assigned by Seller to any person, firm, or corporation purchasing or leasing and intending to continue the operation of the plant or business which is interconnected under such Agreement, subject to the written approval of ~~the~~ Company. A Purchase Power Agreement shall not be transferred and assigned by Seller to any person, firm, or corporation that is party to any other purchase agreement under which a party sells or seeks to sell power to Company from another Qualifying Facility that is located within one-half mile, as measured from the electrical generating equipment. ~~The~~ Company will grant such approval upon being reasonably satisfied that the assignee will fulfill the terms of the Agreement and if, at ~~the~~ Company’s option, a satisfactory guarantee for the payment of any applicable bills is furnished by assignee. However, before such rights and obligations are assigned, the assignee must first obtain necessary approval from all regulatory bodies including, but not limited to, the Commission.
- (f) Notification of Assignment, Transfer or Sale - In the event of an assignment of the rights and obligations accruing to ~~the~~ Seller under this Agreement, or in the event of any contemplated sale, transfer or assignment of the Facility, ~~the~~ Seller shall, in addition to obtaining the approvals hereof, provide a minimum of 30 days prior written notice advising ~~the~~ Company of any plans for such an assignment, sale or transfer.

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- (g) Suspension of Sales Under Agreement at Seller's Request - If ~~the~~ Seller is temporarily unable to produce the electricity contracted for due to physical destruction of, or damage to, his premises, ~~the~~ Company will, upon written request of ~~the~~ Seller, and for a period ~~the~~ Company deems as reasonably required to replace or repair such premises, suspend billing under the Agreement, exclusive of any Monthly Facilities Charges, effective with the beginning of the next sales period.
- (h) Termination of Agreement at Seller's Request - If ~~the~~ Seller desires to terminate the Agreement, ~~the~~ Company will agree to such termination if all bills for services previously rendered to Seller including any termination or other charges applicable under any ~~agreement to interconnect~~ Interconnection Agreement, plus any applicable termination charges, have been paid. Termination charges shall consist of any applicable termination charges for premature termination of capacity as set forth in paragraphs 4 and 6 of these Terms and Conditions. ~~The~~ Company may waive the foregoing provision if ~~the~~ Company has secured or expects to secure from a new occupant or operator of the premises an Agreement satisfactory to ~~the~~ Company for the delivery of electricity to ~~the~~ Company for a term not less than the unexpired portion of ~~the~~ Seller's Agreement.
- (i) Company's Right to Terminate or Suspend Agreement - ~~The~~ Company, in addition to all other legal remedies, may either terminate the Agreement or suspend purchases of electricity from Seller ~~(4) for~~ based on any of the following: (1) default or breach of the Agreement by the Seller, (2) for any fraudulent or unauthorized use of ~~the~~ Company's meter, (3) ~~for~~ failure to pay any applicable bills when due and payable, (4) ~~for any Material Alteration to the Facility without Company's consent or otherwise delivering energy in excess of the Contract Capacity specified under this Agreement, (5) any~~ condition on ~~the~~ Seller's side of the point of delivery actually known by ~~the~~ Company to be, or which ~~the~~ Company reasonably anticipates may be, dangerous to life or property, or ~~(5) due to the Seller's inability~~ (6) Seller's failure to deliver energy to the Company the quality and/or quantity for six (6) consecutive months. Termination of electricity mutually agreed to in the Purchase ~~the Agreement shall be at Company's sole option and is only appropriate when Seller either cannot or will not cure its default.~~

No such termination or suspension, however, will be made by ~~the~~ Company without written notice delivered to Seller, personally or by mail, stating what in particular in the Agreement has been violated, except that no notice need to be given in instances set forth in 1-(i)(2) or 1(i)(5) above. ~~The Company shall give the For violations of Section 1(i)(1) and 1(i)3-4, Seller a minimum of shall have thirty (30) calendar days prior after Seller's receipt of Company's written notice to cure the violation; for violations of Section 1(i)(6) before suspending or terminating the Agreement pursuant to provisions 1(i)(1), (3), and (5) 1(i)(3) (4). The Company shall give the Seller shall have five (5) calendar days after Seller's receipt of Company's prior-written notice to cure the violation before suspending or terminating the Agreement pursuant to provision 1(i)(4)(6).~~

Failure of ~~the~~ Company to terminate the Agreement or to suspend the purchase of electricity at any time after the occurrence of grounds therefor, or to resort to any other legal remedy or to exercise any one or more of such alternative remedies, shall not waive or in any manner affect ~~the~~ Company's right later to resort to any one or more of such rights or remedies on account of any such ground then existing or which may subsequently occur.

Any suspension of the purchase of electricity by ~~the~~ Company or termination of the Agreement upon any authorized grounds shall in no way operate to relieve ~~the~~ Seller of ~~the~~ Seller's liability to compensate ~~the~~ Company for services and/or facilities supplied, nor shall it relieve ~~the~~ Seller (1) of ~~the~~ Seller's liability for the payment of minimum monthly charges during the period of suspension, nor (2) of ~~the~~ Seller's liability for damages, if the Agreement has been terminated, in the amount of

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(a) the minimum monthly charges which would have been payable during the unexpired term of the Agreement plus (b) the Early Contract Termination charge as set forth in these Terms and Conditions.

- (j) Seller's Failure to Fulfill Commitment – Seller's that fail to fulfill the commitment to deliver electric power established in either a Legally Enforceable Obligation to Purchase or an executed Purchase Power Agreement shall be precluded from executing a new Agreement at a higher rate at the same location for the full term of the original contractual commitment.

2. CONDITIONS OF SERVICE

- (a) ~~The~~ Company is not obligated to purchase electricity from ~~the~~ Seller unless and until: (1) ~~the~~ Company's form of Purchase Power Agreement is executed by ~~the~~ Seller and accepted by ~~the~~ Company; (2) in cases where it is necessary to cross private property to accept delivery of electricity from ~~the~~ Seller, ~~the~~ Seller conveys or causes to be conveyed to ~~the~~ Company, without cost to ~~the~~ Company, a right-of-way easement, satisfactory to ~~the~~ Company, across such private property which will provide for the construction, maintenance, and operation of ~~the~~ Company's lines and facilities, necessary to receive electricity from Seller; provided, however, in the absence of a formal conveyance, ~~the~~ Company nevertheless, shall be vested with an easement over Seller's premises authorizing it to do all things necessary including the construction, maintenance, and operation of its lines and facilities for such purpose; and (3) any inspection certificates or permits that may be required by law in the local area are furnished to ~~the~~ Company. Where not required by law, an inspection by a Company-approved inspector shall be made at ~~the~~ Seller's expense. In the event ~~the~~ Seller is unable to secure such necessary rights of way, ~~the~~ Seller shall reimburse ~~the~~ Company for all costs ~~the~~ Company may incur for the securing of such rights of way.

The obligation of ~~the~~ Company in regard to service under the Agreement are dependent upon Company securing and retaining all necessary rights-of-way, privileges, franchises, and permits, for such service. ~~The~~ Company shall not be liable to any Seller in the event Company is delayed or prevented from purchasing power by ~~the~~ Company failure to secure and retain such rights-of-way, privileges, franchises, and permits.

- (b) ~~The~~ Seller shall operate its Facility in compliance with all: (i) System Operator Instructions provided by Company, including any Energy Storage Protocols provided to Seller which have been approved by the Commission, if applicable; (ii) applicable operating guidelines established by the North American Electric Reliability Corporation ("NERC"); and (iii) the SERC Reliability Corporation ("SERC") or any successor thereto.
- (c) ~~The~~ Seller shall submit ~~a request to interconnect~~ an Interconnection Request as set forth in the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections. ~~The~~ Company shall not be required to install facilities to support interconnection of ~~the~~ Seller's generation or execute the Purchase Power Agreement until Seller has signed an agreement to interconnect Interconnection Agreement as set forth in the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as may be required by ~~the~~ Company.
- ~~(d)~~ If electricity is received through lines which cross the lands of the United States of America, a state, or any agency or subdivision of the United States of America or of a state, ~~the~~ Company shall have the right, upon 30 days' written notice, to discontinue receiving electricity from any Seller or Sellers interconnected to such lines, if and when (1) ~~the~~ Company is required by governmental authority to incur expenses in the relocation or the reconstruction underground of any portion of said lines,

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unless ~~the~~ Company is reimbursed for such expense by Sellers or customers connected thereto, or (2) the right of ~~the~~ Company to maintain and operate said lines is terminated, revoked, or denied by governmental authority for any reason.

(d)

3. DEFINITIONS

- (a) ~~Nameplate Capacity: The term "Nameplate Capacity" shall mean the manufacturer's nameplate rated output capability of the generator. For multi-unit generator facilities, the "Nameplate Capacity" of the facility shall be the sum of the individual manufacturer's nameplate rated output capabilities of the generators.~~
- (b) ~~Net Capacity: The term "Net Capacity" shall mean the Nameplate Capacity of the Seller's generating facilities, less the portion of that capacity needed to serve the generating facilities' Auxiliary Load.~~
- ~~(c)~~(a) Auxiliary Load: The term "Auxiliary Load" shall mean power used to operate auxiliary equipment in the ~~facility~~ Facility necessary for power generation (such as pumps, blowers, fuel preparation machinery, and exciters).
- ~~(d) Whenever the term "purchase" or "purchase of electricity" is used in these Terms and Conditions or other portions of the Agreement, it shall be construed to refer to the electricity supplied to the Company by Seller.~~
- ~~(b)~~ The term "Company's conductors" shall mean the Company's wires extending from the point of connection with the Company's existing electric system to the point of delivery.
- ~~(c)~~ "Energy Storage Protocol" shall have the meaning specified in the Purchase Power Agreement.
- ~~(d)~~ "Facility" shall have the meaning specified in the Purchase Power Agreement.
- ~~(e)~~ "Interconnection" shall mean the connection of Company's conductors to Seller's conductors.
- ~~(f)~~ "Material Alteration" as used in this Agreement shall mean a modification to the Facility which renders the Facility description specified in this Agreement inaccurate in any material sense as determined by Company in a commercially reasonable manner including, without limitation, (i) the addition of a Storage Resource; (ii) a modification which results in an increase to the Contract Capacity, Nameplate Capacity (in AC or DC), generating capacity (or similar term used in the Agreement) ~~or the estimated annual energy production of the Facility~~ (collectively the "Existing Capacity"), or (iii) a modification which results in a decrease to the Existing Capacity by more than five (5) percent. Notwithstanding the foregoing, the repair or replacement of equipment at the Facility (including solar panels) with like-kind equipment, which does not increase Existing Capacity, or decrease the Existing Capacity by more than five percent (5%), shall not be considered a Material Alteration.
- ~~(g)~~ "Nameplate Capacity" shall mean the manufacturer's kW_{AC} nameplate rated output capability of the Facility as measured at the delivery point specified in AC. For multi-unit generator facilities, the "Nameplate Capacity" of the Facility shall be the sum of the individual manufacturer's kW_{AC} nameplate rated output capabilities of the generators. The Nameplate Capacity shall also include the DC rating of the Facility. For inverted-based generating facilities, the "Nameplate Capacity" shall be the manufacturer's rated kW_{AC} output on the inverters.

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- (h) “Prudent Utility Practice” means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgement and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.
- ~~(e)~~(i) “Purchase” or “Purchase of electricity” shall be construed to refer to the electricity supplied to Company by Seller from the Facility.
- ~~(f)~~ The term “Seller's conductors” shall mean the Seller's wires extending from the point of delivery to the switch box or other point where the Seller's circuits connect for the purpose of supplying the electricity produced by the Seller.
- ~~(j)~~ The term “interconnection” shall mean the connection of Company's conductors to Seller's conductors.
- ~~(k)~~ “Storage Resource” means battery storage or other energy storage device installed at or connected behind the meter of the Facility.
- ~~(g)~~(l) “System Operator Instruction” means any order, action, requirement, demand, or direction, from the system operator in accordance with Prudent Utility Practice, and delivered to Seller in a non-discriminatory manner, to operate, manage and/or otherwise maintain safe and reliable operations of the system, including, without limitation, an order to suspend or interrupt any operational activity due to an emergency condition or force majeure event; provided however, a System Operator Instruction in response to an emergency condition, force majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.

4. CONTRACT CAPACITY

- (a) The Contract Capacity shall be the kW of specified in the Purchase Power Agreement and shall not exceed the capacity specified in the Purchase Power Seller's Interconnection Agreement. This term shall mean the maximum continuous electrical output capability expressed on an alternating current basis of the generator(s) at any time, at a power factor of approximately unity, without consuming VARs supplied by the Company, as measured at the Point of Delivery and shall be the maximum kW_{AC} delivered to the Company during any billing period. In cases where any change is required in the Company's facilities due to the actual capacity delivered exceeding the Contract Capacity or due to the Seller requesting an increase in the capacity of Company's facilities, the Company may require the Seller to execute a new Agreement or amend an existing Agreement, thereby establishing a new Contract Capacity. If the Company's facilities cannot be upgraded to accept such actual or requested increase, then upon written notice, Seller shall not exceed the existing Contract Capacity or such amount in excess thereof unless and until the increase has been agreed to in an amendment executed by Company and Seller and Seller's facilities have been upgraded to

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accept the actual or requested increase as ~~they may be required by~~ Company ~~determines it is able to accept~~ in its commercially reasonable discretion.

- (b) ~~The Seller shall not change its generating capacity~~ the Contract Capacity (AC or DC), or contracted estimated annual kWh energy production without adequate notice to ~~the~~ Company, and without receiving ~~the~~ Company's prior written consent, and if such unauthorized increase causes loss of or damage to ~~the~~ Company's facilities, the cost of making good such loss or repairing such damage shall be paid by ~~the~~ Seller.
- (c) ~~The~~ Company may require that a new Contract Capacity be determined when it reasonably appears that the capacity of ~~the Seller's~~ generating facility or annual energy production will deviate from contracted or established levels for any reason, including, but not limited to, a change in water flow, steam supply, or fuel supply.
- (d) In the event that the Contract Capacity is terminated, in whole or in part, prior to the completion of the term of the Agreement, the Seller shall pay to the Company a penalty as set forth in paragraph 6, below. Seller may apply to Company to increase the Contract Capacity during the Contract Period and, upon approval by Company and execution of an amendment to implement the change by Company and Seller, future Monthly delivered capacities shall not exceed the revised Contract Capacity. If such increase in Contract Capacity results in additional costs associated with redesign or a resizing of Company's facilities, such additional costs to Seller shall be determined in accordance with the Interconnection Agreement.
- (~~d~~) Any Material Alteration to the Facility, including without limitation, an increase in the Existing Capacity or a decrease in the Existing Capacity by more than five (5) percent or the addition of energy storage capability, shall require the prior written consent of Company, which may be withheld in Company's sole discretion, and shall not be effective until memorialized in an amendment executed by Company and Seller.

(e)

5. CONTRACT ENERGY ESTIMATED ANNUAL ENERGY PRODUCTION

The ~~Contract Energy~~ estimated annual energy production from the Facility specified in the Purchase Power Agreement shall be the estimated total annual kilowatt-hours registered or computed by or from ~~the~~ Company's metering facilities for each time period during a continuous 12-month interval.

6. EARLY CONTRACT TERMINATION OR INCREASE IN CONTRACT CAPACITY OR CONTRACT ENERGY

Early Contract Termination - If Seller terminates the Agreement, or the Agreement is terminated by Company as permitted in Section 1(i) prior to the expiration of the initial (or extended) term of the Purchase Power Agreement, the following payment shall be made to ~~the~~ Company by ~~the~~ Seller:

Early Contract Termination — ~~The~~ Seller shall pay to ~~the~~ Company the total Energy and/or Capacity credits received in excess of the sum of what would have been received under the Variable Rate for Energy and/or Capacity Credits applicable at the initial term of the contract period and as updated every

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two years, plus interest. The interest should be the weighted average rate for new debt issued by ~~the~~ Company in the calendar year previous to that in which the Agreement was commenced.

~~Increase In Contract Capacity — The Seller may apply to the Company to increase the Contract Capacity during the Contract Period and, upon approval by the Company, future Monthly Delivered Capacities shall not exceed the revised Contract Capacity. If such increase in Contract Capacity results in additional costs associated with redesign or a resizing of the Company's facilities, such additional costs to Seller shall be determined in accordance with any agreement to interconnect.~~

7. CONTRACT RENEWAL

This Agreement shall be subject to renewal for subsequent term(s) at the option of ~~the~~ Company on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration ~~the~~ Company's then avoided cost rates and other relevant factors, or (2) set by ~~the Commission~~ arbitration.

8. QUALITY OF ENERGY RECEIVED

- (a) ~~The~~ Seller has full responsibility for the routine maintenance of ~~his~~its generating and protective equipment to insure that reliable, utility grade electric energy is being delivered to ~~the~~ Company.
- (b) The ~~Seller's facility~~ Facility shall be operated in such a manner as to generate reactive power as may be reasonably necessary to maintain voltage levels and reactive area support as specified by ~~the~~ Company. Any operating requirement is subject to modification or revision if warranted by future changes in the distribution or transmission circuit conditions.
- (c) ~~The~~ Seller may operate direct current generators in parallel with ~~the~~ Company through a synchronous inverter. ~~The inverter installation shall be designed such that a utility system interruption will result in the removal of the inverter infeed into the Company's system. Harmonics generated by a DC generator-inverter combination must not adversely affect the Company's supply of electric service to, or the use of electric service by the Company's other customers, and any correction thereof is the full responsibility of Seller.~~
- (d) In the event ~~the~~ Company determines, based on calculations, studies, analyses, monitoring, measurement or observation, that the output of the Facility will cause or is causing ~~the~~ Company to be unable to provide proper voltage levels to its customers, ~~the~~ Seller shall be required to comply with a voltage schedule and/or reactive power output schedule as prescribed by ~~the~~ Company.
- (e) ~~The All Material Alterations to the Facility shall require the prior written consent from Company, and Seller shall provide the Company written notification of any requested changes to their generation system the Facility, support equipment such as inverters, or interconnection facilities and shall provide as soon as reasonably possible to allow Company adequate time to review such requested changes to ensure continued safe interconnection prior to implementation.~~
- (f) Failure of ~~the~~ Seller to comply with either (a), (b), (c), (d) or (e) ~~in paragraph 8~~ above will constitute grounds for ~~the~~ Company to cease parallel operation with Seller's generation equipment and constitute grounds for termination or suspension of the Agreement as set forth under paragraph 1 above.

9. BILLING

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- (a) Meters will be read and bills rendered monthly. Readings are taken each month at intervals of approximately thirty (30) days.
- (b) If ~~the~~ Company is unable to read its purchase meter for any reason, ~~the~~ Seller's production may be estimated by ~~the~~ Company on the basis of ~~the~~ Seller's production during the most recent preceding billing period for which readings were obtained, unless some unusual condition is known to exist. A bill or payment rendered on the basis of such estimate shall be as valid as if made from actual meter readings.
- (c) The term ~~"Month"~~ or ~~"Monthly"~~, as used in ~~the~~ Company's Schedules and Riders, refers to the period of time between the regular meter readings by ~~the~~ Company, except that if the period covered by an initial or final bill, or due to rerouting of the meter reading schedule, is more than 35 or less than 25 days, the bill will be prorated based on a 30-day billing month.
- (d) Payments for capacity and/or energy will be made to ~~the~~ Seller based on the rate schedule stated in the Purchase Power Agreement.
- (e) ~~The~~ Company reserves the right to set off against any amounts due from the Company to Seller, any amounts which are due from Seller to ~~the~~ Company, including, but not limited to, unpaid charges pursuant to the ~~agreement to interconnect~~ Interconnection Agreement or past due balances on any accounts ~~the~~ Seller has with ~~the~~ Company for other services. ~~The Company shall include a written description of any amounts setoff due from the Company to the Seller in the applicable monthly bill.~~

10. RECORDS

In addition to the regular meter readings to be taken monthly for billing purposes, ~~the~~ Company may require additional meter readings, records, transfer of information, etc. as may be agreed upon by the Parties. ~~The~~ Company reserves the right to provide to the Commission or the FERC or any other regulatory body, upon request, information pertaining to this Agreement, including but not limited to: records of the Facility's generation output and ~~the~~ Company's purchases thereof (including copies of monthly statements of power purchases and data from load recorders and telemetering installed at the Facility); copies of this Agreement. ~~The~~ Company will not provide any information developed solely by ~~the~~ Seller and designated by ~~the~~ Seller in writing to be "proprietary" unless ~~expressly~~ required to do so by order of the Commission or the FERC or any other regulatory body or court, in which event, ~~the~~ Company will notify ~~the~~ Seller prior to supplying the proprietary information. ~~The Company will provide the proprietary information under the applicable procedures of the Commission, the FERC or other regulatory body or court for the submission of proprietary and confidential information, but shall not be required to otherwise defend or support the designation of the information as proprietary. Any and all support, defense or justification of the designation of the information as proprietary shall be the sole and exclusive responsibility of Seller.~~

Seller shall provide to Company, on a monthly basis within ten (10) days of the meter reading date and in form to be mutually agreed upon by the Parties, information on the Facility's fuel costs (coal, oil, natural gas, supplemental firing, etc.), if any, for the power delivered to the Company during the preceding month's billing period.

11. METER STOPPAGE OR ERROR

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In the event a meter fails to register accurately within the allowable limits established by the state regulatory body having jurisdiction, ~~the~~ Company will adjust the measured energy for the period of time the meter was shown to be in error, and shall, as provided in the rules and regulations of the state regulatory body having jurisdiction, pay to ~~the~~ Seller, or ~~the~~ Seller shall refund to ~~the~~ Company, the difference between the amount billed and the estimated amount which would have been billed had the meter accurately registered the kilowatt hours provided by ~~the~~ Seller. No part of any minimum service charge shall be refunded.

12. POINT OF DELIVERY

The point of delivery is the point where ~~the~~ Company's conductors are, or are to be, connected to Seller's conductors. ~~The~~ Seller shall do all things necessary to bring its conductors to such point of delivery for connection to ~~the~~ Company's conductors, and shall maintain said conductors in good order at all times. If ~~the~~ Seller chooses to deliver power to ~~the~~ Company through a point of delivery where ~~the~~ Seller presently receives power from ~~the~~ Company, then the point of delivery for the purchase of generation shall be the same point as the point of delivery for electric service.

13. INTERCONNECTION FACILITIES

~~Unless otherwise addressed in a separate agreement to interconnect, If Seller is not subject to the terms and conditions of the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as approved by the Commission in Docket No. 2015-362-E, Order No. 2016-191~~ the following conditions shall apply to Interconnection Facilities necessary to deliver ~~the~~ Seller's electricity to ~~the~~ Company. ~~Otherwise, the terms and conditions of the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as approved by the Commission in Docket No. 2015-362-E, Order No. 2016-191 govern.~~

- (a) By Company: ~~The~~ Company shall install, own, operate, maintain, and otherwise furnish all lines and equipment located on its side of the point of delivery to permit parallel operation of ~~the~~ Seller's facilities with ~~the~~ Company's system. It shall also install and own the necessary metering equipment, and meter transformers, where necessary, for measuring the electricity delivered to ~~the~~ Company, though such meter may be located on ~~the~~ Seller's side of the point of delivery. Interconnection facilities, installed by either ~~the~~ Company or ~~the~~ Seller, solely for such purpose, include, but are not limited to connection, line extension, transformation, switching equipment, protective relaying, metering, telemetering, communications, and appropriate safety equipment.

Any interconnection facilities installed by ~~the~~ Company necessary to receive power from ~~the~~ Seller shall be considered ~~additional facilities~~ Interconnection Facilities and shall be provided, if ~~the~~ Company finds it practicable, under the following conditions:

- (1) The facilities will be of a kind and type normally used by or acceptable to ~~the~~ Company and will be installed at a place and in a manner satisfactory to ~~the~~ Company.
- (2) Seller will pay to Company a Monthly Interconnection Facilities Charge ~~of~~ based on 1.70 percent of the estimated original installed cost and rearrangement cost of all facilities, including metering, required to accept interconnection, but not less than \$25 per month; however, the \$25 minimum will not apply ~~with~~ when the Interconnection Facilities consist only of the meter. The monthly charge for the Interconnection Facilities to be provided under this Agreement is subject to the rates, Service Regulations and conditions of ~~the~~ Company as the same are now on file with the Commission and may be changed or

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modified from time to time upon approval by the Commission. Any such changes or modifications, including those which may result in increased charges for the Interconnection Facilities to be provided by ~~the~~ Company, shall be made a part of this Agreement to the same effect as if fully set forth herein.

- (3) If ~~the~~ Company increases its investment, ~~other than replacement of existing equipment with equipment of equal capacity and kind,~~ in interconnection facilities or other special facilities required by Seller (including conversion of ~~the~~ Company's primary voltage to a higher voltage), the Monthly Interconnection Facilities Charge for providing the ~~interconnection~~ additional facilities will be adjusted at that time. ~~The~~ If the Monthly Interconnection Facilities Charge increases, Seller may terminate the ~~interconnection facilities~~ Interconnection Facilities in accordance with the applicable termination paragraph 1 above, or continue ~~the interconnection facilities~~ Interconnection Facilities under the changed conditions.
 - (4) In lieu of the Monthly Interconnection Facilities Charge of 1.70 percent, ~~the~~ Seller may elect to make a contribution equal to the total interconnection facilities investment, plus associated tax gross-ups. In lieu of the monthly charge above, at ~~the~~ Company's option, ~~the~~ Customer may elect to be billed under an alternative payment option to the 1.70 percent per month. Under such option, the payment must be renewed after each thirty ~~four~~ (34) year period.
 - (5) The Monthly Interconnection Facilities Charge as determined shall continue regardless of the term of the Agreement until ~~the~~ Seller no longer has need for such facilities. In the event ~~the~~ Seller's interconnection facilities should be discontinued or terminated in whole or in part, such discontinuation or termination should be calculated in accordance with 1, above.
 - (6) ~~The~~ Seller's wiring and appurtenant structures shall provide for the location, connection, and installation of ~~the~~ Company's standard metering equipment or other equipment deemed necessary by ~~the~~ Company for the metering of ~~the~~ Seller's electrical output. ~~The~~ Company shall, at its expense, be permitted to install, in ~~the~~ Seller's wiring or equipment, any special metering devices or equipment as deemed necessary for experimental or monitoring purposes.
 - (7) ~~The~~ Company shall furnish and install the Interconnection Facilities no later than the date requested by ~~the~~ Seller for such installation. Seller's obligation to pay the Interconnection Facilities charges shall begin ~~on~~ upon the earlier of (1) completion of the installation but no earlier than the requested in-service date that such specified in the Interconnection Facilities become operational, except as provided in Paragraph 3.4 hereof Agreement or (2) the first date when energy is generated and delivered to Company, and such charges shall apply at all times thereafter during the term of this Agreement, whether or not ~~the~~ Seller is actually supplying electric power to ~~the~~ Company.
- (b) By Seller: ~~The~~ Seller shall install, own, operate, and maintain all lines, and equipment, exclusive of ~~the~~ Company's meter and meter transformers, on ~~the~~ Seller's side of the point of delivery. ~~The~~ Seller will be the owner and have the exclusive control of, and responsibility for, all electricity on Seller's side of the point of delivery. ~~The~~ Seller must conform to any State approved interconnection requirements the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections. ~~The~~ Seller's wiring shall be

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arranged such that all electricity generated for sale can be supplied to one point of delivery and measured by a single meter. ~~The Company's~~ meter may be located on ~~the~~ Seller's side of the point of delivery, and when it is to be so located, ~~the~~ Seller must make suitable provisions in ~~the~~ Seller's wiring, at a place suitable to ~~the~~ Company, for the convenient installation of the type of meter ~~the~~ Company will use. All of ~~the~~ Seller's conductors installed on ~~the~~ Company's side of the meter and not installed in conduit must be readily visible.

~~The~~ Seller shall install and maintain devices adequate to protect ~~the~~ Seller's equipment against irregularities on ~~the~~ Company's system, including devices to protect against single-phasing. ~~The~~ Seller shall also install and maintain such devices as may be necessary to automatically disconnect ~~the~~ Seller's generating equipment, which is operated in parallel with ~~the~~ Company, when service provided by ~~the~~ Seller is affected by electrical disturbances on ~~the~~ Company's or ~~the~~ Seller's systems, or at any time when ~~the~~ Company's system is de-energized from its prime source.

- (c) Access to Premises: The duly authorized agents of ~~the~~ Company shall have the right of ingress and egress to the premises of ~~the~~ Seller at all reasonable hours for the purpose of reading meters, inspecting ~~the~~ Company's wiring and apparatus, changing, exchanging, or repairing ~~the~~ Company's property on the premises of ~~the~~ Seller, or removing such property at the time of or at any time after suspension of purchases or termination of this Agreement.
- (d) Protection: ~~The~~ Seller shall protect ~~the~~ Company's wiring and apparatus on ~~the~~ Seller's premises and shall permit no one but ~~the~~ Company's agents to handle same. In the event of any loss of or damage to such property of ~~the~~ Company caused by or arising out of carelessness, neglect, or misuse by ~~the~~ Seller or ~~the~~ Seller's employees or agents, the cost of making good such loss or repairing such damage shall be paid by ~~the~~ Seller. In cases where ~~the~~ Company's service facilities on ~~the~~ Seller's premises require abnormal maintenance due to ~~the~~ Seller's operation, ~~the~~ Seller shall reimburse ~~the~~ Company for such abnormal maintenance cost.

14. CONTINUANCE OF PURCHASES AND LIABILITY THEREFOR

The Parties do not guarantee continuous service but shall use reasonable diligence at all times to provide for uninterrupted acceptance and supply of electricity. ~~They~~ Each Party shall at all times use reasonable diligence ~~at all times~~ to provide satisfactory service for the acceptance or supply of electricity, and to remove the cause or causes in the event of failure, interruption, reduction or suspension of service for the acceptance or supply of electricity, but neither Party shall be liable for any loss or damage resulting from such failure, interruption, reduction or suspension of service, nor shall same be a default hereunder, when any interruption of service for the acceptance or supply of electricity is due to any of the following:

- (a) An emergency condition or action due to an adverse condition, event, and/or disturbance on ~~the~~ Company's system, or on any other system directly or indirectly interconnected with it, which requires automatic or manual interruption of the supply of electricity to some customers or areas, or automatic or manual interruption, reduction, or cessation of the acceptance of electricity into Company's electrical system in order to limit the occurrence of or extent or damage of the adverse condition or disturbance to Company's system or capability to reliably provide service in compliance and accordance with prudent practices, regulatory requirements, and/or reliability standards, or to prevent damage to generating or transmission facilities, or to expedite restoration of service, or to effect a reduction in service to compensate for an emergency condition on an interconnected system. An emergency condition or action shall include any circumstance that

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requires action by Company to comply with any electric reliability organization or NERC/SERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to Seller's Facility, reliability impairment, loss or damage to Company's system, disruption of generation by Seller, disruption of reliability or service on Company's system, an abnormal condition on the system, and/or endangerment to human life or safety.

- (b) An event or condition of force majeure, as described below.
- (c) Making necessary adjustments to, changes in, or repairs on ~~the~~ Company lines, substations, and facilities, and in cases where, in its opinion, the continuance of service from Seller's premises would endanger persons or property.

Seller shall be responsible for promptly taking all actions requested or required by Company to avoid, prevent, or recover from the occurrence and/or imminent occurrence of any emergency condition and in response to any emergency condition or condition of force majeure, including without limitation installing and operating any equipment necessary to take such actions.

~~The~~ Seller shall be responsible for ~~ins~~ ensuring the safe operation of ~~his~~its equipment at all times, and will install and maintain, to ~~the~~ Company's satisfaction, the necessary automatic equipment to prevent the back feed of power into, or damage to ~~the~~ Company's de-energized system, and shall be subject to immediate disconnection of its equipment from ~~the~~ Company's system if ~~the~~ Company determines that such equipment is unsafe or adversely affects ~~the~~ Company's transmission/distribution system or service to its other customers.

~~The~~ Seller assumes responsibility for and shall indemnify, defend, and save ~~the~~ Company harmless against all liability, claims, judgments, losses, costs, and expenses for injury, loss, or damage to persons or property including personal injury or property damage to ~~the~~ Seller or ~~the~~ Seller's employees on account of defective construction, wiring, or equipment, or improper or careless use of electricity, on ~~the~~ Seller's side of the point of delivery.

15. FORCE MAJEURE

Circumstances beyond the reasonable control of a Party which solely cause that Party to experience delay or failure in delivering or receiving electricity or in providing continuous service hereunder, including: acts of God; unusually severe weather conditions; earthquake; strikes or other labor difficulties; war; riots; fire; requirements shall be deemed to be "events or conditions of force majeure." -It also includes actions or failures to act on the part of governmental authorities (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state or local government bodies), but only if such requirements, actions or failures to act prevent or delay performance; or transportation delays or accidents. -Events or conditions of force majeure do not include such circumstances which merely affect the cost of operating the Facility.

Neither Party shall be responsible nor liable for any delay or failure in its performance hereunder due solely to events or conditions of force majeure, provided that:

- (a) The affected Party gives the other Party written notice describing the particulars of the event or condition of force majeure, such notice to be provided within forty-eight (48) hours of the determination by the affected Party that an event or condition of force majeure has occurred, but in no event later than thirty (30) days from the date of the occurrence of the event or condition of force majeure;

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- (b) The delay or failure of performance is of no longer duration and of no greater scope than is required by the event or condition of force majeure, provided that in no event shall such delay or failure of performance extend beyond a period of twelve (12) months;
- (c) The affected Party uses its best efforts to remedy its inability to perform;
- (d) When the affected Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party prompt written notice to that effect; and,
- (e) The event or condition of force majeure was not caused by or connected with any negligent or intentional acts, errors, or omissions, or failure to comply with any law, rule, regulation, order or ordinance, or any breach or default of this Agreement.

16. INSURANCE

~~The~~ Seller shall obtain and retain, for as long as the generation is interconnected with ~~the~~ Company's system, either the applicable home owner's insurance policy with liability coverage of at least \$100,000 per occurrence or the applicable comprehensive general liability insurance policy with liability coverage in the amount of at least \$300,000 per occurrence, which protects Seller from claims for bodily injury and/or property damage. This insurance shall be primary for all purposes. Seller shall provide certificates evidencing this coverage as required by ~~the~~ Company. ~~The~~ Company reserves the right to refuse to establish, or continue the interconnection of ~~the~~ Seller's generation with ~~the~~ Company's system, if such insurance is not in effect.

17. GOVERNMENTAL RESTRICTIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either party or over this Agreement. This Agreement shall not become effective until all required governmental authorizations are obtained. Certification of receipt of all permits and authorizations shall be furnished by ~~the~~ Seller to ~~the~~ Company upon ~~the~~ Company's request. This Agreement shall not become effective unless it and all provisions thereof are authorized and permitted by such governmental agencies without change or conditions.

This Agreement shall at all times be subject to changes by such governmental agencies, and the parties shall be subject to conditions and obligations, as such governmental agencies may, from time to time, direct in the exercise of their jurisdiction, provided no change may be made in rates or in essential terms and conditions of this contract except by agreement of the parties to this contract. Both parties agree to exert their best efforts to comply with all of the applicable rules and regulations of all governmental agencies having control over either party or this Agreement. The parties shall take all reasonable action necessary to secure all required governmental approval of this Agreement in its entirety and without change.

The delivery date, quantity, and type of electricity to be accepted for purchase by ~~the~~ Company, from ~~the~~ Seller, are subject to changes, restrictions, curtailments, or complete suspensions by ~~the~~ Company as may be deemed by it to be necessary or advisable (a) on account of any lawful order or regulation of any municipal, State, or Federal government or agency thereof, or order of any court of competent jurisdiction, or (b) on account of any emergency due to war, or catastrophe, all without liability on the part of ~~the~~ Company therefor.

TERMS AND CONDITIONS FOR THE PURCHASE OF ELECTRIC POWER

I. PURCHASE POWER AGREEMENT

These “Terms and Conditions” provide a mechanism through which Duke Energy Progress, LLC, hereafter called “Company,” will agree to purchase energy or capacity or both from an Eligible Qualifying Facility as defined in the Purchased Power Schedule PP. The Purchase Power Agreement is solely for the purchase of electricity produced by Seller’s generation, net of generator auxiliary requirement, and does not provide for the sale of any electric service by Company to Seller.

- (a) Description - The Purchase Power Agreement (hereinafter sometimes termed “Agreement”) shall consist of (1) Company’s form of Purchase Power Agreement when signed by Seller and accepted by Company, (2) the applicable Schedule for the purchase of electricity as specified in the Purchase Power Agreement, and (3) these Terms and Conditions for the Purchase of Electric Power (hereinafter referred to as “Terms and Conditions”), and all changes, revisions, alterations therein, or substitutions therefor lawfully made.
- (b) Application of Terms and Conditions and Schedules - All Purchase Power Agreements in effect at the effective date of this tariff or that may be entered into in the future, are made expressly subject to these Terms and Conditions, and subject to all applicable Schedules as specified in the Purchase Power Agreement, and any changes therein, substitutions thereof, or additions thereto lawfully made, provided no change may be made in rates or in essential terms and conditions of this contract except by agreement of the parties to this contract or by order of the state regulatory authority having jurisdiction (hereinafter “Commission”).
- (c) Conflicts - In case of conflict between any provision of a Schedule and of these Terms and Conditions, the provision of the Schedule shall prevail.
- (d) Waiver - The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
- (e) Assignment of Agreement - A Purchase Power Agreement between Company and Seller may be transferred and assigned by Seller to any person, firm, or corporation purchasing or leasing and intending to continue the operation of the plant or business which is interconnected under such Agreement, subject to the written approval of Company. A Purchase Power Agreement shall not be transferred and assigned by Seller to any person, firm, or corporation that is party to any other purchase agreement under which a party sells or seeks to sell power to Company from another Qualifying Facility that is located within one-half mile, as measured from the electrical generating equipment. Company will grant such approval upon being reasonably satisfied that the assignee will fulfill the terms of the Agreement and if, at Company’s option, a satisfactory guarantee for the payment of any applicable bills is furnished by assignee. However, before such rights and obligations are assigned, the assignee must first obtain necessary approval from all regulatory bodies including, but not limited to, the Commission.
- (f) Notification of Assignment, Transfer or Sale - In the event of an assignment of the rights and obligations accruing to Seller under this Agreement, or in the event of any contemplated sale, transfer or assignment of the Facility, Seller shall, in addition to obtaining the approvals hereof, provide a minimum of 30 days prior written notice advising Company of any plans for such an assignment, sale or transfer.
- (g) Suspension of Sales Under Agreement at Seller’s Request - If Seller is temporarily unable to produce the electricity contracted for due to physical destruction of, or damage to, his premises, Company will, upon written request of Seller, and for a period Company deems as reasonably

required to replace or repair such premises, suspend billing under the Agreement, exclusive of any Monthly Facilities Charges, effective with the beginning of the next sales period.

- (h) Termination of Agreement at Seller's Request - If Seller desires to terminate the Agreement, Company will agree to such termination if all bills for services previously rendered to Seller including any termination or other charges applicable under any Interconnection Agreement, plus any applicable termination charges, have been paid. Termination charges shall consist of any applicable termination charges for premature termination of capacity as set forth in paragraphs 4 and 6 of these Terms and Conditions. Company may waive the foregoing provision if Company has secured or expects to secure from a new occupant or operator of the premises an Agreement satisfactory to Company for the delivery of electricity to Company for a term not less than the unexpired portion of Seller's Agreement.
- (i) Company's Right to Terminate or Suspend Agreement - Company, in addition to all other legal remedies, may either terminate the Agreement or suspend purchases of electricity from Seller based on any of the following: (1) default or breach of the Agreement by Seller, (2) any fraudulent or unauthorized use of Company's meter, (3) failure to pay any applicable bills when due and payable, (4) any Material Alteration to the Facility without Company's consent, (5) any condition on Seller's side of the point of delivery actually known by Company to be, or which Company reasonably anticipates may be, dangerous to life or property, or (6) Seller's failure to deliver energy to Company for six (6) consecutive months. Termination of the Agreement shall be at Company's sole option and is only appropriate when Seller either cannot or will not cure its default.

No such termination or suspension, however, will be made by Company without written notice delivered to Seller, personally or by mail, stating what in particular in the Agreement has been violated, except that no notice need to be given in instances set forth in 1(i)(2) or 1(i)(5) above. For violations of Section 1(i)(1) and 1(i)3-4, Seller shall have thirty (30) calendar days after Seller's receipt of Company's written notice to cure the violation; for violations of Section 1(i)(6) Seller shall have five (5) calendar days after Seller's receipt of Company's written notice to cure the violation.

Failure of Company to terminate the Agreement or to suspend the purchase of electricity at any time after the occurrence of grounds therefor, or to resort to any other legal remedy or to exercise any one or more of such alternative remedies, shall not waive or in any manner affect Company's right later to resort to any one or more of such rights or remedies on account of any such ground then existing or which may subsequently occur.

Any suspension of the purchase of electricity by Company or termination of the Agreement upon any authorized grounds shall in no way operate to relieve Seller of Seller's liability to compensate Company for services and/or facilities supplied, nor shall it relieve Seller (1) of Seller's liability for the payment of minimum monthly charges during the period of suspension, nor (2) of Seller's liability for damages, if the Agreement has been terminated, in the amount of (a) the minimum monthly charges which would have been payable during the unexpired term of the Agreement plus (b) the Early Contract Termination charge as set forth in these Terms and Conditions.

- (j) Seller's Failure to Fulfill Commitment - Seller's that fail to fulfill the commitment to deliver electric power established in either a Legally Enforceable Obligation to Purchase or an executed Purchase Power Agreement shall be precluded from executing a new Agreement at a higher rate at the same location for the full term of the original contractual commitment.

2. CONDITIONS OF SERVICE

- (a) Company is not obligated to purchase electricity from Seller unless and until: (1) Company's form of Purchase Power Agreement is executed by Seller and accepted by Company; (2) in cases where

it is necessary to cross private property to accept delivery of electricity from Seller, Seller conveys or causes to be conveyed to Company, without cost to Company, a right-of-way easement, satisfactory to Company, across such private property which will provide for the construction, maintenance, and operation of Company's lines and facilities, necessary to receive electricity from Seller; provided, however, in the absence of a formal conveyance, Company nevertheless, shall be vested with an easement over Seller's premises authorizing it to do all things necessary including the construction, maintenance, and operation of its lines and facilities for such purpose; and (3) any inspection certificates or permits that may be required by law in the local area are furnished to Company. Where not required by law, an inspection by a Company-approved inspector shall be made at Seller's expense. In the event Seller is unable to secure such necessary rights of way, Seller shall reimburse Company for all costs Company may incur for the securing of such rights of way.

The obligation of Company in regard to service under the Agreement is dependent upon Company securing and retaining all necessary rights-of-way, privileges, franchises, and permits, for such service. Company shall not be liable to any Seller in the event Company is delayed or prevented from purchasing power by Company failure to secure and retain such rights-of-way, privileges, franchises, and permits.

- (b) Seller shall operate its Facility in compliance with all: (i) System Operator Instructions provided by Company, including any Energy Storage Protocols provided to Seller which have been approved by the Commission, if applicable; (ii) applicable operating guidelines established by the North American Electric Reliability Corporation ("NERC"); and (iii) the SERC Reliability Corporation ("SERC") or any successor thereto.
- (c) Seller shall submit an Interconnection Request as set forth in the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections. Company shall not be required to install facilities to support interconnection of Seller's generation or execute the Purchase Power Agreement until Seller has signed an Interconnection Agreement as set forth in the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as may be required by Company.
- (d) If electricity is received through lines which cross the lands of the United States of America, a state, or any agency or subdivision of the United States of America or of a state, Company shall have the right, upon 30 days' written notice, to discontinue receiving electricity from any Seller or Sellers interconnected to such lines, if and when (1) Company is required by governmental authority to incur expenses in the relocation or the reconstruction underground of any portion of said lines, unless Company is reimbursed for such expense by Sellers or customers connected thereto, or (2) the right of Company to maintain and operate said lines is terminated, revoked, or denied by governmental authority for any reason.

3. DEFINITIONS

- (a) "Auxiliary Load" shall mean power used to operate auxiliary equipment in the Facility necessary for power generation (such as pumps, blowers, fuel preparation machinery, and exciters).
- (b) "Company's conductors" shall mean Company's wires extending from the point of connection with Company's existing electric system to the point of delivery.
- (c) "Energy Storage Protocol" shall have the meaning specified in the Purchase Power Agreement.
- (d) "Facility" shall have the meaning specified in the Purchase Power Agreement.
- (e) "Interconnection" shall mean the connection of Company's conductors to Seller's conductors.

- (f) "Material Alteration" as used in this Agreement shall mean a modification to the Facility which renders the Facility description specified in this Agreement inaccurate in any material sense as determined by Company in a commercially reasonable manner including, without limitation, (i) the addition of a Storage Resource; (ii) a modification which results in an increase to the Contract Capacity, Nameplate Capacity (in AC or DC), generating capacity (or similar term used in the Agreement) (collectively the "Existing Capacity"), or (iii) a modification which results in a decrease to the Existing Capacity by more than five (5) percent. Notwithstanding the foregoing, the repair or replacement of equipment at the Facility (including solar panels) with like-kind equipment, which does not increase Existing Capacity or decrease the Existing Capacity by more than five percent (5%), shall not be considered a Material Alteration.
- (g) "Nameplate Capacity" shall mean the manufacturer's kW_{AC} nameplate rated output capability of the Facility as measured at the delivery point specified in AC. For multi-unit generator facilities, the "Nameplate Capacity" of the Facility shall be the sum of the individual manufacturer's kW_{AC} nameplate rated output capabilities of the generators. The Nameplate Capacity shall also include the DC rating of the Facility. For inverted-based generating facilities, the "Nameplate Capacity" shall be the manufacturer's rated kW_{AC} output on the inverters.
- (h) "Prudent Utility Practice" means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgement and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.
- (i) "Purchase" or "Purchase of electricity" shall be construed to refer to the electricity supplied to Company by Seller from the Facility.
- (j) "Seller's conductors" shall mean Seller's wires extending from the point of delivery to the switch box or other point where Seller's circuits connect for the purpose of supplying the electricity produced by Seller.
- (k) "Storage Resource" means battery storage or other energy storage device installed at or connected behind the meter of the Facility.
- (l) "System Operator Instruction" means any order, action, requirement, demand, or direction, from the system operator in accordance with Prudent Utility Practice, and delivered to Seller in a non-discriminatory manner, to operate, manage and/or otherwise maintain safe and reliable operations of the system, including, without limitation, an order to suspend or interrupt any operational activity due to an emergency condition or force majeure event; provided however, a System Operator Instruction in response to an emergency condition, force majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.

4. CONTRACT CAPACITY

- (a) The Contract Capacity shall be specified in the Purchase Power Agreement and shall not exceed the capacity specified in Seller's Interconnection Agreement. This term shall mean the maximum

continuous electrical output capability expressed on an alternating current basis of the generator(s) at any time, at a power factor of approximately unity, without consuming VARs supplied by Company, as measured at the Point of Delivery and shall be the maximum kW_{AC} delivered to Company during any billing period. Seller shall not exceed the Contract Capacity unless and until the increase has been agreed to in an amendment executed by Company and Seller and Seller's facilities have been upgraded to accept the actual or requested increase as may be required by Company in its commercially reasonable discretion.

- (b) Seller shall not change the Contract Capacity (AC or DC), without adequate notice to Company, and without receiving Company's prior written consent, and if such unauthorized increase causes loss of or damage to Company's facilities, the cost of making good such loss or repairing such damage shall be paid by Seller.
- (c) Company may require that a new Contract Capacity be determined when it reasonably appears that the capacity of Seller's generating facility or annual energy production will deviate from contracted or established levels for any reason, including, but not limited to, a change in water flow, steam supply, or fuel supply.
- (d) Seller may apply to Company to increase the Contract Capacity during the Contract Period and, upon approval by Company and execution of an amendment to implement the change by Company and Seller, future Monthly delivered capacities shall not exceed the revised Contract Capacity. If such increase in Contract Capacity results in additional costs associated with redesign or a resizing of Company's facilities, such additional costs to Seller shall be determined in accordance with the Interconnection Agreement.
- (e) Any Material Alteration to the Facility, including without limitation, an increase in the Existing Capacity or a decrease in the Existing Capacity by more than five (5) percent or the addition of energy storage capability shall require the prior written consent of Company, which may be withheld in Company's sole discretion, and shall not be effective until memorialized in an amendment executed by Company and Seller.

5. ESTIMATED ANNUAL ENERGY PRODUCTION

The estimated annual energy production from the Facility specified in the Purchase Power Agreement shall be the estimated total annual kilowatt-hours registered or computed by or from Company's metering facilities for each time period during a continuous 12-month interval.

6. EARLY CONTRACT TERMINATION

Early Contract Termination - If Seller terminates the Agreement, or the Agreement is terminated by Company as permitted in Section 1(i) prior to the expiration of the initial (or extended) term of the Purchase Power Agreement, the following payment shall be made to Company by Seller:

Seller shall pay to Company the total Energy and/or Capacity credits received in excess of the sum of what would have been received under the Variable Rate for Energy and/or Capacity Credits applicable at the initial term of the contract period and as updated every two years, plus interest. The interest should be the weighted average rate for new debt issued by Company in the calendar year previous to that in which the Agreement was commenced.

7. CONTRACT RENEWAL

This Agreement shall be subject to renewal for subsequent term(s) at the option of Company on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration Company's then avoided cost rates and other relevant factors, or (2) set by arbitration.

8. QUALITY OF ENERGY RECEIVED

- (a) Seller has full responsibility for the routine maintenance of its generating and protective equipment to insure that reliable, utility grade electric energy is being delivered to Company.
- (b) The Facility shall be operated in such a manner as to generate reactive power as may be reasonably necessary to maintain voltage levels and reactive area support as specified by Company. Any operating requirement is subject to modification or revision if warranted by future changes in the distribution or transmission circuit conditions.
- (c) Seller may operate direct current generators in parallel with Company through a synchronous inverter. The inverter installation shall be designed such that a utility system interruption will result in the removal of the inverter infeed into Company's system. Harmonics generated by a DC generator-inverter combination must not adversely affect Company's supply of electric service to, or the use of electric service by Company's other customers, and any correction thereof is the full responsibility of Seller.
- (d) In the event Company determines, based on calculations, studies, analyses, monitoring, measurement or observation, that the output of the Facility will cause or is causing Company to be unable to provide proper voltage levels to its customers, Seller shall be required to comply with a voltage schedule and/or reactive power output schedule as prescribed by Company.
- (e) All Material Alterations to the Facility shall require the prior written consent from Company, and Seller shall provide Company written notification of any requested changes to the Facility, support equipment such as inverters, or interconnection facilities as soon as reasonably possible to allow Company adequate time to review such requested changes to ensure continued safe interconnection prior to implementation.
- (f) Failure of Seller to comply with either (a), (b), (c), (d) or (e) above will constitute grounds for Company to cease parallel operation with Seller's generation equipment and constitute grounds for termination or suspension of the Agreement as set forth under paragraph 1, above.

9. BILLING

- (a) Meters will be read and bills rendered monthly. Readings are taken each month at intervals of approximately thirty (30) days.
- (b) If Company is unable to read its purchase meter for any reason, Seller's production may be estimated by Company on the basis of Seller's production during the most recent preceding billing period for which readings were obtained, unless some unusual condition is known to exist. A bill or payment rendered on the basis of such estimate shall be as valid as if made from actual meter readings.
- (c) The term "Month" or "Monthly", as used in Company's Schedules and Riders, refers to the period of time between the regular meter readings by the Company, except that if the period covered by an initial or final bill, or due to rerouting of the meter reading schedule, is more than 34 or less than 28 days, the bill will be prorated based on a 30-day billing month.
- (d) Payments for capacity and/or energy will be made to Seller based on the rate schedule stated in the Purchase Power Agreement.
- (e) Company reserves the right to set off against any amounts due from Company to Seller, any amounts which are due from Seller to Company, including, but not limited to, unpaid charges pursuant to the Interconnection Agreement or past due balances on any accounts Seller has with Company for other services.

10. RECORDS

In addition to the regular meter readings to be taken monthly for billing purposes, Company may require additional meter readings, records, transfer of information, etc. as may be agreed upon by the Parties. Company reserves the right to provide to the Commission or the FERC or any other regulatory body, upon request, information pertaining to this Agreement, including but not limited to: records of the Facility's generation output and Company's purchases thereof (including copies of monthly statements of power purchases and data from load recorders and telemetering installed at the Facility); copies of this Agreement. Company will not provide any information developed solely by Seller and designated by Seller in writing to be "proprietary" unless required to do so by order of the Commission or the FERC or any other regulatory body or court, in which event, Company will notify Seller prior to supplying the proprietary information.

Seller shall provide to Company, on a monthly basis within ten (10) days of the meter reading date and in form to be mutually agreed upon by the Parties, information on the Facility's fuel costs (coal, oil, natural gas, supplemental firing, etc.), if any, for the power delivered to the Company during the preceding month's billing period.

11. METER STOPPAGE OR ERROR

In the event a meter fails to register accurately within the allowable limits established by the state regulatory body having jurisdiction, Company will adjust the measured energy for the period of time the meter was shown to be in error, and shall, as provided in the rules and regulations of the state regulatory body having jurisdiction, pay to Seller, or Seller shall refund to Company, the difference between the amount billed and the estimated amount which would have been billed had the meter accurately registered the kilowatt hours provided by Seller. No part of any minimum service charge shall be refunded.

12. POINT OF DELIVERY

The point of delivery is the point where Company's conductors are, or are to be, connected to Seller's conductors. Seller shall do all things necessary to bring its conductors to such point of delivery for connection to Company's conductors, and shall maintain said conductors in good order at all times. If Seller chooses to deliver power to Company through a point of delivery where Seller presently receives power from Company, then the point of delivery for the purchase of generation shall be the same point as the point of delivery for electric service.

13. INTERCONNECTION FACILITIES

If Seller is not subject to the terms and conditions of the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as approved by the Commission in Docket No. 2015-362-E, Order No. 2016-191 the following conditions shall apply to Interconnection Facilities necessary to deliver Seller's electricity to Company. Otherwise, the terms and conditions of the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as approved by the Commission in Docket No. 2015-362-E, Order No. 2016-191 govern.

- (a) By Company: Company shall install, own, operate, maintain, and otherwise furnish all lines and equipment located on its side of the point of delivery to permit parallel operation of Seller's facilities with Company's system. It shall also install and own the necessary metering equipment, and meter transformers, where necessary, for measuring the electricity delivered to Company, though such meter may be located on Seller's side of the point of delivery. Interconnection facilities, installed by either Company or Seller, solely for such purpose, include, but are not limited to connection, line extension, transformation, switching equipment, protective relaying, metering, telemetering, communications, and appropriate safety equipment.

Any interconnection facilities installed by Company necessary to receive power from Seller shall be considered Interconnection Facilities and shall be provided, if Company finds it practicable, under the following conditions:

- (1) The facilities will be of a kind and type normally used by or acceptable to Company and will be installed at a place and in a manner satisfactory to Company.
 - (2) Seller will pay to Company a Monthly Interconnection Facilities Charge based on 1.0 percent of the estimated original installed cost and rearrangement cost of all facilities, including metering, required to accept interconnection, but not less than \$25 per month; however, the \$25 minimum will not apply when the Interconnection Facilities consist only of the meter. The monthly charge for the Interconnection Facilities to be provided under this Agreement is subject to the rates, Service Regulations and conditions of Company as the same are now on file with the Commission and may be changed or modified from time to time upon approval by the Commission. Any such changes or modifications, including those which may result in increased charges for the Interconnection Facilities to be provided by Company, shall be made a part of this Agreement to the same effect as if fully set forth herein.
 - (3) If Company increases its investment in interconnection facilities or other special facilities required by Seller (including conversion of Company's primary voltage to a higher voltage), the Monthly Interconnection Facilities Charge for providing the additional facilities will be adjusted at that time. If the Monthly Interconnection Facilities Charge increases, Seller may terminate the Interconnection Facilities in accordance with the applicable termination paragraph 1 above, or continue Interconnection Facilities under the changed conditions.
 - (4) In lieu of the Monthly Interconnection Facilities Charge of 1.0 percent, Seller may elect to make a contribution equal to the total interconnection facilities investment, plus associated tax gross-ups. After such payment, the Monthly Interconnection Facilities Charge for the interconnection facilities will be 0.3 percent of said payment.
 - (5) The Monthly Interconnection Facilities Charge as determined shall continue regardless of the term of the Agreement until Seller no longer has need for such facilities. In the event Seller's interconnection facilities should be discontinued or terminated in whole or in part, such discontinuation or termination should be calculated in accordance with 1, above.
 - (6) Seller's wiring and appurtenant structures shall provide for the location, connection, and installation of Company's standard metering equipment or other equipment deemed necessary by Company for the metering of Seller's electrical output. Company shall, at its expense, be permitted to install, in Seller's wiring or equipment, any special metering devices or equipment as deemed necessary for experimental or monitoring purposes.
 - (7) Company shall furnish and install the Interconnection Facilities no later than the date requested by Seller for such installation. Seller's obligation to pay the Interconnection Facilities charges shall begin upon the earlier of (1) completion of the installation but no earlier than the requested in-service date specified in the Interconnection Agreement or (2) the first date when energy is generated and delivered to Company, and such charges shall apply at all times thereafter during the term of this Agreement, whether or not Seller is actually supplying electric power to Company.
- (b) By Seller: Seller shall install, own, operate, and maintain all lines, and equipment, exclusive of Company's meter and meter transformers, on Seller's side of the point of delivery. Seller will be the owner and have the exclusive control of, and responsibility for, all electricity on Seller's side

of the point of delivery. Seller must conform to the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections. Seller's wiring shall be arranged such that all electricity generated for sale can be supplied to one point of delivery and measured by a single meter. Company's meter may be located on Seller's side of the point of delivery, and when it is to be so located, Seller must make suitable provisions in Seller's wiring, at a place suitable to Company, for the convenient installation of the type of meter Company will use. All of Seller's conductors installed on Company's side of the meter and not installed in conduit must be readily visible.

Seller shall install and maintain devices adequate to protect Seller's equipment against irregularities on Company's system, including devices to protect against single-phasing. Seller shall also install and maintain such devices as may be necessary to automatically disconnect Seller's generating equipment, which is operated in parallel with Company, when service provided by Seller is affected by electrical disturbances on Company's or Seller's systems, or at any time when Company's system is de-energized from its prime source.

- (c) Access to Premises: The duly authorized agents of Company shall have the right of ingress and egress to the premises of Seller at all reasonable hours for the purpose of reading meters, inspecting Company's wiring and apparatus, changing, exchanging, or repairing Company's property on the premises of Seller, or removing such property at the time of or at any time after suspension of purchases or termination of this Agreement.
- (d) Protection: Seller shall protect Company's wiring and apparatus on Seller's premises and shall permit no one but Company's agents to handle same. In the event of any loss of or damage to such property of Company caused by or arising out of carelessness, neglect, or misuse by Seller or Seller's employees or agents, the cost of making good such loss or repairing such damage shall be paid by Seller. In cases where Company's service facilities on Seller's premises require abnormal maintenance due to Seller's operation, Seller shall reimburse Company for such abnormal maintenance cost.

14. CONTINUANCE OF PURCHASES AND LIABILITY THEREFOR

The Parties do not guarantee continuous service but shall use reasonable diligence at all times to provide for uninterrupted acceptance and supply of electricity. Each Party shall at all times use reasonable diligence to provide satisfactory service for the acceptance or supply of electricity, and to remove the cause or causes in the event of failure, interruption, reduction or suspension of service for the acceptance or supply of electricity, but neither Party shall be liable for any loss or damage resulting from such failure, interruption, reduction or suspension of service, nor shall same be a default hereunder, when any interruption of service for the acceptance or supply of electricity is due to any of the following:

- (a) An emergency condition or action due to an adverse condition, event, and/or disturbance on Company's system, or on any other system directly or indirectly interconnected with it, which requires automatic or manual interruption of the supply of electricity to some customers or areas, or automatic or manual interruption, reduction, or cessation of the acceptance of electricity into Company's electrical system in order to limit the occurrence of or extent or damage of the adverse condition or disturbance to Company's system or capability to reliably provide service in compliance and accordance with prudent practices, regulatory requirements, and/or reliability standards, or to prevent damage to generating or transmission facilities, or to expedite restoration of service, or to effect a reduction in service to compensate for an emergency condition on an interconnected system. An emergency condition or action shall include any circumstance that requires action by Company to comply with any electric reliability organization or NERC/SERC regulations or standards, including without limitation

actions to respond to, prevent, limit, or manage loss or damage to Seller's Facility, reliability impairment, loss or damage to Company's system, disruption of generation by Seller, disruption of reliability or service on Company's system, an abnormal condition on the system, and/or endangerment to human life or safety.

- (b) An event or condition of force majeure, as described below.
- (c) Making necessary adjustments to, changes in, or repairs on Company lines, substations, and facilities, and in cases where, in its opinion, the continuance of service from Seller's premises would endanger persons or property.

Seller shall be responsible for promptly taking all actions requested or required by Company to avoid, prevent, or recover from the occurrence and/or imminent occurrence of any emergency condition and in response to any emergency condition or condition of force majeure, including without limitation installing and operating any equipment necessary to take such actions.

Seller shall be responsible for ensuring the safe operation of its equipment at all times, and will install and maintain, to Company's satisfaction, the necessary automatic equipment to prevent the back feed of power into, or damage to Company's de-energized system, and shall be subject to immediate disconnection of its equipment from Company's system if Company determines that such equipment is unsafe or adversely affects Company's transmission/distribution system or service to its other customers.

Seller assumes responsibility for and shall indemnify, defend, and save Company harmless against all liability, claims, judgments, losses, costs, and expenses for injury, loss, or damage to persons or property including personal injury or property damage to Seller or Seller's employees on account of defective construction, wiring, or equipment, or improper or careless use of electricity, on Seller's side of the point of delivery.

15. FORCE MAJEURE

Circumstances beyond the reasonable control of a Party which solely cause that Party to experience delay or failure in delivering or receiving electricity or in providing continuous service hereunder, including: acts of God; unusually severe weather conditions; earthquake; strikes or other labor difficulties; war; riots; fire; requirements shall be deemed to be "events or conditions of force majeure". It also includes actions or failures to act on the part of governmental authorities (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state or local government bodies), but only if such requirements, actions or failures to act prevent or delay performance; or transportation delays or accidents. Events or conditions of force majeure do not include such circumstances which merely affect the cost of operating the Facility.

Neither Party shall be responsible nor liable for any delay or failure in its performance hereunder due solely to events or conditions of force majeure, provided that:

- (a) The affected Party gives the other Party written notice describing the particulars of the event or condition of force majeure, such notice to be provided within forty-eight (48) hours of the determination by the affected Party that an event or condition of force majeure has occurred, but in no event later than thirty (30) days from the date of the occurrence of the event or condition of force majeure;
- (b) The delay or failure of performance is of no longer duration and of no greater scope than is required by the event or condition of force majeure, provided that in no event shall such delay or failure of performance extend beyond a period of twelve (12) months;
- (c) The affected Party uses its best efforts to remedy its inability to perform;

- (d) When the affected Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party prompt written notice to that effect; and,
- (e) The event or condition of force majeure was not caused by or connected with any negligent or intentional acts, errors, or omissions, or failure to comply with any law, rule, regulation, order or ordinance, or any breach or default of this Agreement.

16. INSURANCE

Seller shall obtain and retain, for as long as the generation is interconnected with Company's system, either the applicable home owner's insurance policy with liability coverage of at least \$100,000 per occurrence or the applicable comprehensive general liability insurance policy with liability coverage in the amount of at least \$300,000 per occurrence, which protects Seller from claims for bodily injury and/or property damage. This insurance shall be primary for all purposes. Seller shall provide certificates evidencing this coverage as required by Company. Company reserves the right to refuse to establish, or continue the interconnection of Seller's generation with Company's system, if such insurance is not in effect.

17. GOVERNMENTAL RESTRICTIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either party or over this Agreement. This Agreement shall not become effective until all required governmental authorizations are obtained. Certification of receipt of all permits and authorizations shall be furnished by Seller to Company upon Company's request. This Agreement shall not become effective unless it and all provisions thereof are authorized and permitted by such governmental agencies without change or conditions.

This Agreement shall at all times be subject to changes by such governmental agencies, and the parties shall be subject to conditions and obligations, as such governmental agencies may, from time to time, direct in the exercise of their jurisdiction, provided no change may be made in rates or in essential terms and conditions of this contract except by agreement of the parties to this contract. Both parties agree to exert their best efforts to comply with all of the applicable rules and regulations of all governmental agencies having control over either party or this Agreement. The parties shall take all reasonable action necessary to secure all required governmental approval of this Agreement in its entirety and without change.

The delivery date, quantity, and type of electricity to be accepted for purchase by Company, from Seller, are subject to changes, restrictions, curtailments, or complete suspensions by Company as may be deemed by it to be necessary or advisable (a) on account of any lawful order or regulation of any municipal, State, or Federal government or agency thereof, or order of any court of competent jurisdiction, or (b) on account of any emergency due to war, or catastrophe, all without liability on the part of Company therefor.

TERMS AND CONDITIONS FOR THE PURCHASE OF ELECTRIC POWER

I. PURCHASE POWER AGREEMENT

These “Terms and Conditions” provide a mechanism through which Duke Energy Progress, LLC, hereafter called “Company,” will agree to purchase energy or capacity or both from an Eligible Qualifying Facility as defined in the Purchased Power Schedule PP. ~~This~~The Purchase Power Agreement is solely for the purchase of electricity produced by Seller’s generation, net of generator auxiliary requirement, and does not provide for the sale of any electric service by Company to Seller.

- (a) Description - The Purchase Power Agreement (hereinafter sometimes termed ~~“~~“Agreement~~”~~”) shall consist of (1) Company’s form of Purchase Power Agreement when signed by Seller and accepted by Company, (2) the applicable Schedule for the purchase of electricity as specified in the Purchase Power Agreement, and (3) these Terms and Conditions for the Purchase of Electric Power (hereinafter referred to as ~~“~~“Terms and Conditions~~”~~”), and all changes, revisions, alterations therein, or substitutions therefor lawfully made.
- (b) Application of Terms and Conditions and Schedules - All Purchase Power Agreements in effect at the effective date of this tariff or that may be entered into in the future, are made expressly subject to these Terms and Conditions, and subject to all applicable Schedules as specified in the Purchase Power Agreement, and any changes therein, substitutions thereof, or additions thereto lawfully made, provided no change may be made in rates or in essential terms and conditions of this contract except by agreement of the parties to this contract or by order of the state regulatory authority having jurisdiction (hereinafter “Commission”).
- (c) Conflicts - In case of conflict between any provision of a Schedule and of these Terms and Conditions, the provision of the Schedule shall prevail.
- (d) Waiver - The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
- (e) Assignment of Agreement - A Purchase Power Agreement between Company and Seller may be transferred and assigned by Seller to any person, firm, or corporation purchasing or leasing and intending to continue the operation of the plant or business which is interconnected under such Agreement, subject to the written approval of Company. A Purchase Power Agreement shall not be transferred and assigned by Seller to any person, firm, or corporation that is party to any other purchase agreement under which a party sells or seeks to sell power to Company from another Qualifying Facility that is located within one-half mile, as measured from the electrical generating equipment. Company will grant such approval upon being reasonably satisfied that the assignee will fulfill the terms of the Agreement and if, at ~~the~~ Company’s option, a satisfactory guarantee for the payment of any applicable bills is furnished by assignee. However, before such rights and obligations are assigned, the assignee must first obtain necessary approval from all regulatory bodies including, but not limited to, the Commission.
- (f) Notification of Assignment, Transfer or Sale - In the event of an assignment of the rights and obligations accruing to Seller under this Agreement, or in the event of any contemplated sale, transfer or assignment of the Facility, ~~the~~ Seller shall, in addition to obtaining the approvals hereof, provide a minimum of 30 days prior written notice advising Company of any plans for such an assignment, sale or transfer.
- (g) Suspension of Sales Under Agreement at Seller's Request - If Seller is temporarily unable to produce the electricity contracted for due to physical destruction of, or damage to, his premises, Company will, upon written request of Seller, and for a period Company deems as reasonably

required to replace or repair such premises, suspend billing under the Agreement, exclusive of any Monthly Facilities Charges, effective with the beginning of the next sales period.

- (h) Termination of Agreement at Seller's Request - If Seller desires to terminate the Agreement, Company will agree to such termination if all bills for services previously rendered to Seller including any termination or other charges applicable under any ~~agreement—to interconnect~~Interconnection Agreement, plus any applicable termination charges, have been paid. Termination charges shall consist of any applicable termination charges for premature termination of capacity as set forth in paragraphs 4 and 6 of these Terms and Conditions. Company may waive the foregoing provision if Company has secured or expects to secure from a new occupant or operator of the premises an Agreement satisfactory to Company for the delivery of electricity to Company for a term not less than the unexpired portion of Seller's Agreement.
- (i) Company's Right to Terminate or Suspend Agreement - Company, in addition to all other legal remedies, may either terminate the Agreement or suspend purchases of electricity from Seller ~~(4) for~~based on any of the following: (1) default or breach of the Agreement by Seller, (2) for any fraudulent or unauthorized use of Company's meter, (3) ~~for~~ failure to pay any applicable bills when due and payable, (4) ~~for any Material Alteration to the Facility without Company's consent or otherwise delivering energy in excess of the Contract Capacity specified under this Agreement, (5) any~~ condition on Seller's side of the point of delivery actually known by Company to be, or which Company reasonably anticipates may be, dangerous to life or property, or ~~(5) due to Seller's inability~~(6) Seller's failure to deliver energy to Company the quality for six (6) consecutive months. Termination of the Agreement shall be at Company's sole option and/or quantity of electricity mutually agreed to in the Purchase Agreement is only appropriate when Seller either cannot or will not cure its default.

No such termination or suspension, however, will be made by Company without written notice delivered to Seller, personally or by mail, stating what in particular in the Agreement has been violated, except that no notice need to be given in instances set forth in 1-(i)(2) or 1(i)(5) above. Company shall give For violations of Section 1(i)(1) and 1(i)3-4, Seller a minimum of shall have thirty (30) calendar days ~~prior~~after Seller's receipt of Company's written notice to cure the violation; for violations of Section 1(i)(6) before suspending or terminating the Agreement pursuant to provisions 1.(i)(1), (3), and (5) 1(i)(3) (4). Company shall give Seller shall have five (5) calendar days after Seller's receipt of Company's prior written notice to cure the violation before suspending or terminating the Agreement pursuant to provision 1.(i)(4) 1(i)(6).

Failure of Company to terminate the Agreement or to suspend the purchase of electricity at any time after the occurrence of grounds therefor, or to resort to any other legal remedy or to exercise any one or more of such alternative remedies, shall not waive or in any manner affect Company's right later to resort to any one or more of such rights or remedies on account of any such ground then existing or which may subsequently occur.

Any suspension of the purchase of electricity by Company or termination of the Agreement upon any authorized grounds shall in no way operate to relieve Seller of Seller's liability to compensate Company for services and/or facilities supplied, nor shall it relieve Seller (1) of Seller's liability for the payment of minimum monthly charges during the period of suspension, nor (2) of Seller's liability for damages, if the Agreement has been terminated, in the amount of (a) the minimum monthly charges which would have been payable during the unexpired term of the Agreement plus (b) the Early Contract Termination charge as set forth in these Terms and Conditions.

(j) Seller's Failure to Fulfill Commitment – Seller's that fail to fulfill the commitment to deliver electric power established in either a Legally Enforceable Obligation to Purchase or an executed Purchase Power Agreement shall be precluded from executing a new Agreement at a higher rate at the same location for the full term of the original contractual commitment.

2. CONDITIONS OF SERVICE

- (a) Company is not obligated to purchase electricity from Seller unless and until: (1) Company's form of Purchase Power Agreement is executed by Seller and accepted by Company; (2) in cases where it is necessary to cross private property to accept delivery of electricity from Seller, Seller conveys or causes to be conveyed to Company, without cost to Company, a right-of-way easement, satisfactory to Company, across such private property which will provide for the construction, maintenance, and operation of Company's lines and facilities, necessary to receive electricity from Seller; provided, however, in the absence of a formal conveyance, Company nevertheless, shall be vested with an easement over Seller's premises authorizing it to do all things necessary including the construction, maintenance, and operation of its lines and facilities for such purpose; and (3) any inspection certificates or permits that may be required by law in the local area are furnished to Company. Where not required by law, an inspection by a Company-approved inspector shall be made at Seller's expense. In the event Seller is unable to secure such necessary rights of way, Seller shall reimburse Company for all costs Company may incur for the securing of such rights of way.

The obligation of Company in regard to service under the Agreement ~~are~~is dependent upon Company securing and retaining all necessary rights-of-way, privileges, franchises, and permits, for such service. Company shall not be liable to any Seller in the event Company is delayed or prevented from purchasing power by Company failure to secure and retain such rights-of-way, privileges, franchises, and permits.

- (b) Seller shall operate its Facility in compliance with all: (i) System Operator Instructions provided by Company, including any Energy Storage Protocols provided to Seller which have been approved by the Commission, if applicable; (ii) applicable operating guidelines established by the North American Electric Reliability Corporation ("NERC"); and (iii) the SERC Reliability Corporation ("SERC") or any successor thereto.
- (c) Seller shall submit ~~a request to interconnect an~~ Interconnection Request as set forth in the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections. ~~-Company shall not be required to install facilities to support interconnection of Seller's generation or execute the Purchase Power Agreement until Seller has signed an agreement to interconnect~~ Interconnection Agreement as set forth in the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as may be required by Company.
- (d) If electricity is received through lines which cross the lands of the United States of America, a state, or any agency or subdivision of the United States of America or of a state, Company shall have the right, upon 30 days' written notice, to discontinue receiving electricity from any Seller or Sellers interconnected to such lines, if and when (1) Company is required by governmental authority to incur expenses in the relocation or the reconstruction underground of any portion of said lines, unless Company is reimbursed for such expense by Sellers or customers connected thereto, or (2) the right of Company to maintain and operate said lines is terminated, revoked, or denied by governmental authority for any reason.

3. DEFINITIONS

- (a) ~~Nameplate Capacity: The term “Nameplate Capacity” shall mean the manufacturer’s nameplate rated output capability of the generator. For multi unit generator facilities, the “Nameplate Capacity” of the facility shall be the sum of the individual manufacturer’s nameplate rated output capabilities of the generators.~~
- (b) ~~Net Capacity: The term “Net Capacity” shall mean the Nameplate Capacity of the Seller’s generating facilities, less the portion of that capacity needed to serve the generating facilities’ Auxiliary Load.~~
- (c)(a) ~~Auxiliary Load: The term “Auxiliary Load” shall mean power used to operate auxiliary equipment in the facilityFacility necessary for power generation (such as pumps, blowers, fuel preparation machinery, and exciters).~~
- (d) ~~Whenever the term “purchase” or “purchase of electricity” is used in these Terms and Conditions or other portions of the Agreement, it shall be construed to refer to the electricity supplied to Company by Seller.~~
- (b) ~~The term “Company’s conductors” shall mean Company’s wires extending from the point of connection with Company’s existing electric system to the point of delivery.~~
- (c) ~~“Energy Storage Protocol” shall have the meaning specified in the Purchase Power Agreement.~~
- (d) ~~“Facility” shall have the meaning specified in the Purchase Power Agreement.~~
- (e) ~~“Interconnection” shall mean the connection of Company’s conductors to Seller’s conductors.~~
- (f) ~~“Material Alteration” as used in this Agreement shall mean a modification to the Facility which renders the Facility description specified in this Agreement inaccurate in any material sense as determined by Company in a commercially reasonable manner including, without limitation, (i) the addition of a Storage Resource; (ii) a modification which results in an increase to the Contract Capacity, Nameplate Capacity (in AC or DC), generating capacity (or similar term used in the Agreement) or the estimated annual energy production of the Facility (collectively the “Existing Capacity”), or (iii) a modification which results in a decrease to the Existing Capacity by more than five (5) percent. Notwithstanding the foregoing, the repair or replacement of equipment at the Facility (including solar panels) with like-kind equipment, which does not increase Existing Capacity or decrease the Existing Capacity by more than five percent (5%), shall not be considered a Material Alteration.~~
- (g) ~~“Nameplate Capacity” shall mean the manufacturer’s kW_{AC} nameplate rated output capability of the Facility as measured at the delivery point specified in AC. For multi-unit generator facilities, the “Nameplate Capacity” of the Facility shall be the sum of the individual manufacturer’s kW_{AC} nameplate rated output capabilities of the generators. The Nameplate Capacity shall also include the DC rating of the Facility. For inverted-based generating facilities, the “Nameplate Capacity” shall be the manufacturer’s rated kW_{AC} output on the inverters.~~
- (h) ~~“Prudent Utility Practice” means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgement and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to~~

be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.

(e)(i) "Purchase" or "Purchase of electricity" shall be construed to refer to the electricity supplied to Company by Seller from the Facility.

(j) ~~The term~~ "Seller's conductors" shall mean Seller's wires extending from the point of delivery to the switch box or other point where Seller's circuits connect for the purpose of supplying the electricity produced by Seller.

(k) "Storage Resource" means battery storage or other energy storage device installed at or connected behind the meter of the Facility.

(f) "System Operator Instruction" means any order, action, requirement, demand, or direction, from the system operator in accordance with Prudent Utility Practice, and delivered to Seller in a non-discriminatory manner, to operate, manage and/or otherwise maintain safe and reliable operations of the system, including, without limitation, an order to suspend or interrupt any operational activity due to an emergency condition or force majeure event; provided however, a System Operator Instruction in response to an emergency condition, force majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.

(g) ~~The term "interconnection" shall mean the connection of Company's conductors to Seller's conductors.~~

(h)(l)

4. CONTRACT CAPACITY

(a) The Contract Capacity shall be ~~the kW of capacity~~ specified in the Purchase Power Agreement and shall not exceed the capacity specified in Seller's Interconnection Agreement. This term shall mean the maximum continuous electrical output capability expressed on an alternating current basis of the generator(s) at any time, at a power factor of approximately unity, without consuming VARs supplied by Company, as measured at the Point of Delivery and shall be the maximum kW_{AC} delivered to Company during any billing period. ~~In cases where any change is required in Company's facilities due to the actual capacity delivered exceeding the Contract Capacity or due to Seller requesting an increase in the capacity of Company's facilities, Company may require Seller to execute a new Agreement or amend an existing Agreement, thereby establishing a new Contract Capacity. If Company's facilities cannot be upgraded to accept such actual or requested increase, then upon written notice, Seller shall not exceed the existing Contract Capacity or such amount in excess thereof unless and until the increase has been agreed to in an amendment executed by Company and Seller and Seller's facilities have been upgraded to accept the actual or requested increase as may be required by Company determine it is able to accept in its commercially reasonable discretion.~~

(b) Seller shall not change ~~its generating capacity~~ the Contract Capacity (AC or DC), or contracted estimated annual kWh energy production without adequate notice to Company, and without receiving Company's prior written consent, and if such unauthorized increase causes loss of or damage to Company's facilities, the cost of making good such loss or repairing such damage shall be paid by Seller.

(c) Company may require that a new Contract Capacity be determined when it reasonably appears that the capacity of Seller's generating facility or annual energy production will deviate from contracted or established levels for any reason, including, but not limited to, a change in water flow, steam supply, or fuel supply.

(d) Seller may apply to Company to increase the Contract Capacity during the Contract Period and, upon approval by Company and execution of an amendment to implement the change by Company and Seller, future Monthly delivered capacities shall not exceed the revised Contract Capacity. If such increase in Contract Capacity results in additional costs associated with redesign or a resizing of Company's facilities, such additional costs to Seller shall be determined in accordance with the Interconnection Agreement.

(e)(e) Any Material Alteration to the Facility, including without limitation, an increase in the Existing Capacity or a decrease in the Existing Capacity by more than five (5) percent or the addition of energy storage capability shall require the prior written consent of Company, which may be withheld in Company's sole discretion, and shall not be effective until memorialized in an amendment executed by Company and Seller.

~~(d) In the event that the Contract Capacity is terminated, in whole or in part, prior to the completion of the term of the Agreement, the Seller shall pay to Company a penalty as set forth in paragraph 6, below.~~

5. CONTRACT ENERGY ESTIMATED ANNUAL ENERGY PRODUCTION

~~The Contract Energy~~ The estimated annual energy production from the Facility specified in the Purchase Power Agreement shall be the estimated total annual kilowatt-hours registered or computed by or from Company's metering facilities for each time period during a continuous 12-month interval.

6. EARLY CONTRACT TERMINATION OR INCREASE IN CONTRACT CAPACITY OR CONTRACT ENERGY

Early Contract Termination - If Seller terminates the Agreement, or the Agreement is terminated by Company as permitted in Section 1(i) prior to the expiration of the initial (or extended) term of the Purchase Power Agreement, the following payment shall be made to Company by Seller:

Early Contract Termination—Seller shall pay to Company the total Energy and/or Capacity credits received in excess of the sum of what would have been received under the Variable Rate for Energy and/or Capacity Credits applicable at the initial term of the contract period and as updated every two years, plus interest. The interest should be the weighted average rate for new debt issued by ~~the~~ Company in the calendar year previous to that in which the Agreement was commenced.

~~Increase In Contract Capacity—Seller may apply to Company to increase the Contract Capacity during the Contract Period and, upon approval by Company, future Monthly Delivered Capacities shall not exceed the revised Contract Capacity. If such increase in Contract Capacity results in additional costs associated with redesign or a resizing of Company's facilities, such additional costs to Seller shall be determined in accordance with any agreement to interconnect.~~

7. CONTRACT RENEWAL

This Agreement shall be subject to renewal for subsequent term(s) at the option of Company on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration ~~the~~ Company's then avoided cost rates and other relevant factors, or (2) set by ~~the Commission~~ arbitration.

8. QUALITY OF ENERGY RECEIVED

(a) Seller has full responsibility for the routine maintenance of ~~his~~ its generating and protective equipment to insure that reliable, utility grade electric energy is being delivered to Company.

(b) ~~Seller's facility~~ The Facility shall be operated in such a manner as to generate reactive power as may be reasonably necessary to maintain voltage levels and reactive area support as specified by

Company. Any operating requirement is subject to modification or revision if warranted by future changes in the distribution or transmission circuit conditions.

- (c) Seller may operate direct current generators in parallel with Company through a synchronous inverter. The inverter installation shall be designed such that a utility system interruption will result in the removal of the inverter infeed into ~~the~~ Company's system. Harmonics generated by a DC generator-inverter combination must not adversely affect Company's supply of electric service to, or the use of electric service by Company's other customers, and any correction thereof is the full responsibility of Seller.
- (d) In the event Company determines, based on calculations, studies, analyses, monitoring, measurement or observation, that the output of the Facility will cause or is causing ~~the~~ Company to be unable to provide proper voltage levels to its customers, Seller shall be required to comply with a voltage schedule and/or reactive power output schedule as prescribed by Company.
- (e) All Material Alterations to the Facility shall require the prior written consent from Company, and Seller shall provide Company written notification of any ~~material requested~~ changes to ~~their generation system~~ the Facility, support equipment such as inverters, or interconnection facilities and shall provide as soon as reasonably possible to allow Company adequate time to review such requested changes to ensure continued safe interconnection prior to implementation.
- (f) Failure of Seller to comply with either (a), (b), (c), (d) or (e) above will constitute grounds for Company to cease parallel operation with Seller's generation equipment and constitute grounds for termination or suspension of the Agreement as set forth under paragraph 1, above.

9. BILLING

- (a) Meters will be read and bills rendered monthly. Readings are taken each month at intervals of approximately thirty (30) days.
- (b) If Company is unable to read its purchase meter for any reason, Seller's production may be estimated by Company on the basis of Seller's production during the most recent preceding billing period for which readings were obtained, unless some unusual condition is known to exist. A bill or payment rendered on the basis of such estimate shall be as valid as if made from actual meter readings.
- (c) The term "Month" or "Monthly", as used in Company's Schedules and Riders, refers to the period of time between the regular meter readings by the Company, except that if the period covered by an initial or final bill, or due to rerouting of the meter reading schedule, is more than 34 or less than 28 days, the bill will be prorated based on a 30-day billing month.
- (d) Payments for capacity and/or energy will be made to Seller based on the rate schedule stated in the Purchase Power Agreement.
- (e) Company reserves the right to set off against any amounts due from ~~the~~ Company to Seller, any amounts which are due from Seller to Company, including, but not limited to, unpaid charges pursuant to the ~~agreement to interconnect~~ Interconnection Agreement or past due balances on any accounts Seller has with Company for other services.

~~Company shall include a written description of any amounts setoff due from Company to Seller in the applicable monthly bill.~~

10. RECORDS

In addition to the regular meter readings to be taken monthly for billing purposes, Company may require additional meter readings, records, transfer of information, etc. as may be agreed upon by the Parties.

Company reserves the right to provide to the Commission or the FERC or any other regulatory body, upon request, information pertaining to this Agreement, including but not limited to: records of the Facility's generation output and Company's purchases thereof (including copies of monthly statements of power purchases and data from load recorders and telemetering installed at the Facility); copies of this Agreement. ~~The Company will not provide any information developed solely by Seller and designated by Seller in writing to be "proprietary" unless expressly required to do so by order of the Commission or the FERC or any other regulatory body or court, in which event, the Company will notify Seller prior to supplying the proprietary information. The Company will provide the proprietary information under the applicable procedures of the Commission, the FERC or other regulatory body or court for the submission of proprietary and confidential information, but shall not be required to otherwise defend or support the designation of the information as proprietary. Any and all support, defense or justification of the designation of the information as proprietary shall be the sole and exclusive responsibility of Seller.~~ Seller prior to supplying the proprietary information.

Seller shall provide to Company, on a monthly basis within ten (10) days of the meter reading date and in form to be mutually agreed upon by the Parties, information on the Facility's fuel costs (coal, oil, natural gas, supplemental firing, etc.), if any, for the power delivered to the Company during the preceding month's billing period.

11. METER STOPPAGE OR ERROR

In the event a meter fails to register accurately within the allowable limits established by the state regulatory body having jurisdiction, Company will adjust the measured energy for the period of time the meter was shown to be in error, and shall, as provided in the rules and regulations of the state regulatory body having jurisdiction, pay to Seller, or Seller shall refund to Company, the difference between the amount billed and the estimated amount which would have been billed had the meter accurately registered the kilowatt hours provided by Seller. No part of any minimum service charge shall be refunded.

12. POINT OF DELIVERY

The point of delivery is the point where Company's conductors are, or are to be, connected to Seller's conductors. ~~Seller shall do all things necessary to bring its conductors to such point of delivery for connection to Company's conductors, and shall maintain said conductors in good order at all times. If Seller chooses to deliver power to Company through a point of delivery where Seller presently receives power from Company, then the point of delivery for the purchase of generation shall be the same point as the point of delivery for electric service.~~

13. INTERCONNECTION FACILITIES

~~Unless otherwise addressed~~ If Seller is not subject to the terms and conditions of the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as approved by the Commission in a separate agreement to interconnect, Docket No. 2015-362-E, Order No. 2016-191 the following conditions shall apply to Interconnection Facilities necessary to deliver Seller's electricity to Company. Otherwise, the terms and conditions of the South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections, as approved by the Commission in Docket No. 2015-362-E, Order No. 2016-191 govern.

- (a) By Company: Company shall install, own, operate, maintain, and otherwise furnish all lines and equipment located on its side of the point of delivery to permit parallel operation of ~~the~~ Seller's facilities with ~~the~~ Company's system. It shall also install and own the necessary metering equipment, and meter transformers, where necessary, for measuring the electricity delivered to

Company, though such meter may be located on Seller's side of the point of delivery. Interconnection facilities, installed by either Company or Seller, solely for such purpose, include, but are not limited to connection, line extension, transformation, switching equipment, protective relaying, metering, telemetering, communications, and appropriate safety equipment.

Any interconnection facilities installed by Company necessary to receive power from Seller shall be considered ~~extra facilities~~ Interconnection Facilities and shall be provided, if Company finds it practicable, under the following conditions:

- (1) The facilities will be of a kind and type normally used by or acceptable to Company and will be installed at a place and in a manner satisfactory to Company.
- (2) Seller will pay to Company a Monthly Interconnection Facilities Charge ~~of based on~~ 1.0 percent of the estimated original installed cost and rearrangement cost of all facilities, including metering, required to accept interconnection, but not less than \$25 per month; however, the \$25 minimum will not apply when the Interconnection Facilities consist only of the meter. The monthly charge for the Interconnection Facilities to be provided under this Agreement is subject to the rates, Service Regulations and conditions of ~~the~~ Company as the same are now on file with the Commission and may be changed or modified from time to time upon approval by the Commission. Any such changes or modifications, including those which may result in increased charges for the Interconnection Facilities to be provided by ~~the~~ Company, shall be made a part of this Agreement to the same effect as if fully set forth herein.
- (3) If Company increases its investment, ~~other than replacement of existing equipment with equipment of equal capacity and kind,~~ in interconnection facilities or other special facilities required by Seller (including conversion of ~~the~~ Company's primary voltage to a higher voltage), the Monthly Interconnection Facilities Charge for providing the ~~interconnection~~ additional facilities will be adjusted at that time. ~~—If the Monthly Interconnection Facilities Charge increases,~~ Seller may terminate the ~~interconnection facilities~~ Interconnection Facilities in accordance with the applicable termination paragraph 1 above, or continue ~~the interconnection facilities~~ Interconnection Facilities under the changed conditions.
- (4) In lieu of the Monthly Interconnection Facilities Charge of 1.0 percent, Seller may elect to make a contribution equal to the total interconnection facilities investment, plus associated tax gross-ups. After such payment, the Monthly Interconnection Facilities Charge for the interconnection facilities will be 0.3 percent of said payment.
- (5) The Monthly Interconnection Facilities Charge as determined shall continue regardless of the term of the Agreement until Seller no longer has need for such facilities. In the event Seller's interconnection facilities should be discontinued or terminated in whole or in part, such discontinuation or termination should be calculated in accordance with 1, above.
- (6) Seller's wiring and appurtenant structures shall provide for the location, connection, and installation of Company's standard metering equipment or other equipment deemed necessary by Company for the metering of Seller's electrical output. Company shall, at its expense, be permitted to install, in Seller's wiring or equipment, any special metering devices or equipment as deemed necessary for experimental or monitoring purposes.
- (7) Company shall furnish and install the Interconnection Facilities no later than the date requested by Seller for such installation. Seller's obligation to pay the Interconnection Facilities charges shall begin ~~on upon~~ the earlier of (1) completion of the installation but no earlier than the requested in-service date that such specified in the Interconnection Facilities

~~become operational, except as provided in Paragraph 3.4 hereof~~ Agreement or (2) the first date when energy is generated and delivered to Company, and such charges shall apply at all times thereafter during the term of this Agreement, whether or not Seller is actually supplying electric power to Company.

- (b) By Seller: Seller shall install, own, operate, and maintain all lines, and equipment, exclusive of Company's meter and meter transformers, on Seller's side of the point of delivery. Seller will be the owner and have the exclusive control of, and responsibility for, all electricity on Seller's side of the point of delivery. ~~Seller must conform to anythe South Carolina Generator Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Interconnections State-approved interconnection requirements.~~ Seller's wiring shall be arranged such that all electricity generated for sale can be supplied to one point of delivery and measured by a single meter. Company's meter may be located on Seller's side of the point of delivery, and when it is to be so located, Seller must make suitable provisions in Seller's wiring, at a place suitable to Company, for the convenient installation of the type of meter Company will use. All of Seller's conductors installed on ~~the~~ Company's side of the meter and not installed in conduit must be readily visible.

Seller shall install and maintain devices adequate to protect Seller's equipment against irregularities on Company's system, including devices to protect against single-phasing. Seller shall also install and maintain such devices as may be necessary to automatically disconnect Seller's generating equipment, which is operated in parallel with Company, when service provided by Seller is affected by electrical disturbances on Company's or Seller's systems, or at any time when Company's system is de-energized from its prime source.

- (c) Access to Premises: The duly authorized agents of Company shall have the right of ingress and egress to the premises of Seller at all reasonable hours for the purpose of reading meters, inspecting Company's wiring and apparatus, changing, exchanging, or repairing Company's property on the premises of Seller, or removing such property at the time of or at any time after suspension of purchases or termination of this Agreement.
- (d) Protection: Seller shall protect Company's wiring and apparatus on Seller's premises and shall permit no one but Company's agents to handle same. In the event of any loss of or damage to such property of Company caused by or arising out of carelessness, neglect, or misuse by Seller or Seller's employees or agents, the cost of making good such loss or repairing such damage shall be paid by Seller. In cases where Company's service facilities on Seller's premises require abnormal maintenance due to Seller's operation, Seller shall reimburse Company for such abnormal maintenance cost.

14. CONTINUANCE OF PURCHASES AND LIABILITY THEREFOR

The Parties do not guarantee continuous service but shall use reasonable diligence at all times to provide for uninterrupted acceptance and supply of electricity. ~~They~~ Each Party shall at all times use reasonable diligence ~~at all times~~ to provide satisfactory service for the acceptance or supply of electricity, and to remove the cause or causes in the event of failure, interruption, reduction or suspension of service for the acceptance or supply of electricity, but neither Party shall be liable for any loss or damage resulting from such failure, interruption, reduction or suspension of service, nor shall same be a default hereunder, when any interruption of service for the acceptance or supply of electricity is due to any of the following:

- (a) An emergency condition or action due to an adverse condition, event, and/or disturbance on Company's system, or on any other system directly or indirectly interconnected with it, which requires automatic or manual interruption of the supply of electricity to some customers or

- areas, or automatic or manual interruption, reduction, or cessation of the acceptance of electricity into Company's electrical system in order to limit the occurrence of or extent or damage of the adverse condition or disturbance to Company's system or capability to reliably provide service in compliance and accordance with prudent practices, regulatory requirements, and/or reliability standards, or to prevent damage to generating or transmission facilities, or to expedite restoration of service, or to effect a reduction in service to compensate for an emergency condition on an interconnected system. An emergency condition or action shall include any circumstance that requires action by Company to comply with any electric reliability organization or NERC/SERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to Seller's Facility, reliability impairment, loss or damage to Company's system, disruption of generation by Seller, disruption of reliability or service on Company's system, an abnormal condition on the system, and/or endangerment to human life or safety.
- (b) An event or condition of force majeure, as described below.
 - (c) Making necessary adjustments to, changes in, or repairs on Company lines, substations, and facilities, and in cases where, in its opinion, the continuance of service from Seller's premises would endanger persons or property.

Seller shall be responsible for promptly taking all actions requested or required by Company to avoid, prevent, or recover from the occurrence and/or imminent occurrence of any emergency condition and in response to any emergency condition or condition of force majeure, including without limitation installing and operating any equipment necessary to take such actions.

Seller shall be responsible for ensuring the safe operation of ~~his~~its equipment at all times, and will install and maintain, to Company's satisfaction, the necessary automatic equipment to prevent the back feed of power into, or damage to Company's de-energized system, and shall be subject to immediate disconnection of its equipment from Company's system if Company determines that such equipment is unsafe or adversely affects Company's transmission/distribution system or service to its other customers.

Seller assumes responsibility for and shall indemnify, defend, and save Company harmless against all liability, claims, judgments, losses, costs, and expenses for injury, loss, or damage to persons or property including personal injury or property damage to Seller or Seller's employees on account of defective construction, wiring, or equipment, or improper or careless use of electricity, on Seller's side of the point of delivery.

15. FORCE MAJEURE

Circumstances beyond the reasonable control of a Party which solely cause that Party to experience delay or failure in delivering or receiving electricity or in providing continuous service hereunder, including: acts of God; unusually severe weather conditions; earthquake; strikes or other labor difficulties; war; riots; fire; requirements shall be deemed to be "events or conditions of force majeure". It also includes actions or failures to act on the part of governmental authorities (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state or local government bodies), but only if such requirements, actions or failures to act prevent or delay performance; or transportation delays or accidents. Events or conditions of force majeure do not include such circumstances which merely affect the cost of operating the Facility.

Neither Party shall be responsible nor liable for any delay or failure in its performance hereunder due solely to events or conditions of force majeure, provided that:

- (a) The affected Party gives the other Party written notice describing the particulars of the event or condition of force majeure, such notice to be provided within forty-eight (48) hours of the determination by the affected Party that an event or condition of force majeure has occurred, but in no event later than thirty (30) days from the date of the occurrence of the event or condition of force majeure;
- (b) The delay or failure of performance is of no longer duration and of no greater scope than is required by the event or condition of force majeure, provided that in no event shall such delay or failure of performance extend beyond a period of twelve (12) months;
- (c) The affected Party uses its best efforts to remedy its inability to perform;
- (d) When the affected Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party prompt written notice to that effect; and,
- (e) The event or condition of force majeure was not caused by or connected with any negligent or intentional acts, errors, or omissions, or failure to comply with any law, rule, regulation, order or ordinance, or any breach or default of this Agreement.

16. INSURANCE

Seller shall obtain and retain, for as long as the generation is interconnected with Company's system, either the applicable home owner's insurance policy with liability coverage of at least \$100,000 per occurrence or the applicable comprehensive general liability insurance policy with liability coverage in the amount of at least \$300,000 per occurrence, which protects Seller from claims for bodily injury and/or property damage. This insurance shall be primary for all purposes. Seller shall provide certificates evidencing this coverage as required by Company. Company reserves the right to refuse to establish, or continue the interconnection of Seller's generation with Company's system, if such insurance is not in effect.

17. GOVERNMENTAL RESTRICTIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either party or over this Agreement. ~~This Agreement shall not become effective until all required governmental authorizations are obtained.~~ Certification of receipt of all permits and authorizations shall be furnished by Seller to Company upon Company's request. This Agreement shall not become effective unless it and all provisions thereof are authorized and permitted by such governmental agencies without change or conditions.

This Agreement shall at all times be subject to changes by such governmental agencies, and the parties shall be subject to conditions and obligations, as such governmental agencies may, from time to time, direct in the exercise of their jurisdiction, provided no change may be made in rates or in essential terms and conditions of this contract except by agreement of the parties to this contract. Both parties agree to exert their best efforts to comply with all of the applicable rules and regulations of all governmental agencies having control over either party or this Agreement. The parties shall take all reasonable action necessary to secure all required governmental approval of this Agreement in its entirety and without change.

The delivery date, quantity, and type of electricity to be accepted for purchase by Company, from Seller, are subject to changes, restrictions, curtailments, or complete suspensions by Company as may be deemed by it to be necessary or advisable (a) on account of any lawful order or regulation of any municipal, State, or Federal government or agency thereof, or order of any court of competent jurisdiction, or (b) on account of any emergency due to war, or catastrophe, all without liability on the part of ~~the~~ Company therefor.

Exhibit A
Energy Storage Protocol For Schedule PP Sellers

1. The Storage Resource must be on the DC side of the inverter and charged exclusively by the Facility.
2. The Storage Resource will be controlled by the Seller, within operational limitations described below.
3. The maximum output of the Facility, including any storage capability, at any given time shall be limited to the Facility's Contract Capacity as specified in the Agreement.
4. The discharge of stored energy is not permitted while the Facility has received or is subject to a curtailment instruction (i.e., System Operator Instruction) from the system operator.
5. Ramp rates for Storage Resource shall not exceed 10 percent of the Storage Resource's capacity (MW) on a per minute basis, up or down.
6. Scheduling for capturing peak pricing periods and other storage limitations:
 - a. For all (winter and summer) months/days with capacity rate hours ("Capacity Hours"), the Seller shall distribute any discharge of the storage device in a manner that levelizes (holds constant), on an expected basis, the total output of the Facility (combined output of solar generator and storage device) at the highest practical level over the duration of the Capacity Hours of such calendar day, except as limited by ramp rate criteria, inverter capability, and the Facility's Contract Capacity as specified in the Agreement.
 - i. For any storage discharge occurring on weekends and holidays where only Off-Peak energy rates apply, the Seller shall apply the same discharge logic (same hours for any desired discharge) that is applied to Weekdays/non-Holidays, for the respective month.
 - b. For the remaining (shoulder) months without Capacity Hour windows, the Seller shall distribute any discharge of the storage device in a way that levelizes (holds constant), on an expected basis, the total output of the Facility (combined output of solar generator and storage device) at the highest practical level during the full am on-peak energy period and/or full pm on-peak energy period of the Seller's discretion, except as limited by ramp rate criteria, inverter capability, and the Facility's Contract Capacity as specified in the Agreement.
7. Company reserves the right to add or modify operating restrictions specified in these Energy Storage Protocols to the extent necessary to comply with NERC Standards as such standards may be modified from time to time during the Term. Any such modification shall be implemented by Company in a Commercially Reasonable Manner and shall be applied to the Facility and Company's own generating assets on a non-discriminatory basis. If Seller can make a commercially reasonable demonstration to Company, which is approved by Company in its reasonable discretion, that the Facility does not contribute to potential NERC compliance violations for which the modifications have been implemented, then such modifications shall not apply to the Facility.

8. If identification of Capacity Hours changes over the course of the term of the Agreement, Seller will make Commercially Reasonable Efforts to work with Company to adjust the hours of charging/discharging to coincide with these updated hours. However, Seller shall not be obligated to do so in a way that compromises their original economic value contemplated for storage resource.
9. Seller will only be compensated for Energy and Capacity actually provided to Buyer in accordance with the terms of the Agreement.

Notes:

- a) Other capitalized terms used in this Exhibit which have not been defined herein shall have the meaning ascribed to such terms in the Agreement to which this exhibit is attached.